

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 105/02

R.A/C.P No.

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SECTION OFFICER (Judl.)

Kabita
7/12/17

FORM NO. 4
(See Rule 42)
GENERAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Orginal No. 105/2002
Misc.Petition No. /
Contempt Petition No. /
Review Application No. /

Applicant(s) P.K. Banerjee & Sons

Respondent(s) W.O.T. Sons

Advocate for Applicant(s) M. Chanda, Mrs. N. D. Goswami
G.N. Chakrabarty

Advocate for Respondent(s) Cast : A.K. Chundury

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
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This is application in form
C. P. for Rs. 50/- deposited
V/ 105/2002 Dated 18.4.2002
Dated 18.4.2002
By Dy. Registrar 104/02

3.4.02 Heard Mr. M.Chanda, learned counsel for
the applicant.

Issue notice of motion.

List on 1.5.2002 for admission.

Notice prepared and
sent to D/o for my
the respondent No
1 to 6 by Regd A.D.

H C Usha
Member

1.5.2002 Admit, call for the records. Four weeks
time is granted to the respondents to file
written statement.

List the case for order on 31.5.2002.

① Service report are
still awaited.

Vice-Chairman

By
30.4.02

bb

31.5.02 List again on
5.7.2002 to enable the
Respondents to file written
statement.

No written statement
has been filed.

BB
30.5.02

Vice-Chairman

mb

No W.S has been filed.

BB
18.7.02

BB
18.7.02

19.7.02 At the request of Mr.A.K.Chou-
dhury, learned Addl.C.G.S.C. four weeks
time is allowed for filing of written
statement. List on 23.8.02 for orders.

CC Ushar
Member

lm

No W.S has been
filed.

23.8.2002

At the request of Mr.A.K.Chaudhuri,
learned Addl.C.G.S.C. four weeks time is
allowed to the respondents to file written
statement.

List the case on 20.9.2002.

CC Ushar
Member

bb

20.9.02

No written statement so far filed
by the respondents. List again on 8.11.2002
to enable the respondents to file written
statement.

No written statement
has been filed.

BB
7.11.02

Vice-Chairman

mb

8.11.02

List again on 13.12.2002 to enable
the respondents to file written statement.

No W.S has been
filed.

BB
12.12.02

Vice-Chairman

mb

O.A.No.105/2002

(3)

3

13.12.2002 Four weeks time allowed to the respondents for filing of written statement. List for orders on 17.1.2003.

Vice-Chairman

nkm

No written statement has been filed.

30
30.1.03

No written statement has been filed.

30
30.2.03

31.1.2003 Four weeks time allowed to the respondents for filing written statement. List for orders on 28.2.2003.

Vice-Chairman

nkm

28.2.2003 The respondents are yet to file written statement though time granted. Post the matter for hearing on 25.4.2003. The respondents may file written statement within three weeks from today.

Vice-Chairman

12.3.03
W.Ps submitted
by respondent Nos.
1, 2, 3, 4, 5 and 6.

bb

25.4.2003 On the prayer made by Mr.G.N.Chakraborty, learned counsel appearing for the applicant, the case is adjourned and is listed again for hearing on 12.5.2003 along with O.A.96/2002 & O.A.229/2002.

Vice-Chairman

bb

12/5/03. The case is adjourned to 23/5/03.

bb

Rejoinder
submitted by the
applicant.

Apri

4

The Case is ready
for hearing.

25/03

23.5.03 Put up again before appropriate Bench (Single Bench) alongwith connected O.A.s. 96/02 and 229/02 on 3.6.03 for hearing.

km
Member

Vice-Chairman

pg

3.6.2003

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.

nkm

Vice-Chairman

Reed 10/6/03
M.A. Chaudhary
18/6/03

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXXX No. of 2002

DATE OF DECISION 3.6.2003
TIME OF DECISION

Shri Prabir Kumar Banerjee and 2 others

APPLICANT(S).

Mr M. Chanda and mr G.N. Chakraborty

ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others

CENTRAL ADMINISTRATIVE TRIBUNAL RESPONDENT(S).
GUWAHATI BENCH

Mr A.K. Chaudhuri, Addl. C.G.S.C.

O.A. / R.A. No. of ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

DATE OF DECISION

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ? APPLICANT(S).
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ? ADVOCATE FOR THE APPLICANT(S).
4. Whether the judgment is to be circulated to the other Benches ?

- VERSUS -

Judgment delivered by Hon'ble Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL RESPONDENT(S).
GUWAHATI BENCH

O.A. / R.A. No. of ADVOCATE FOR THE
RESPONDENT(S).

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.105 of 2002

Date of decision: This the 3rd day of June 2003

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

1. Shri Prabir Kumar Banerjee
A/C Operator (Casual Labourer)
New Telephone Exchange,
Nagaon, Assam.
2. Shri Sibu Sankar Kundu
A/C Operator (Casual Labourer)
New Telephone Exchange,
Nagaon, Assam.
3. Shri Sambhu Chakraborty
A/C Operator (Casual Labourer)
New Telephone Exchange,
Nagaon, Assam.

.....Applicants

By Advocates Mr M. Chanda and Mr G.N. Chakraborty.

- versus -

1. The Union of India,
Ministry of Communication,
Department of Telecom, New Delhi.
(represented by the Secretary,
Telecom Commission, New Delhi).
2. The Chief General Manager
Assam Telecom Circle,
Ulubari, Guwahati.
3. The Telecom District Manager
Nagaon Telecom District,
Nagaon, Assam.
4. The Sub-Divisional Engineer (Cons.),
Nagaon Sub-Division,
Nagaon, Assam.
5. Shrr S.C. Topadar
Divisional Engineer (P & A),
Telecom District,
Nagaon, Assam.
6. Shri Pankaj Das
Telecom District Manager,
Nagaon Telecom District,
Nagaon, Assam.

.....Respondents

By Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.

.....



4

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The issue relates to conferment of temporary status.

2. The three applicants earlier moved this Bench praying for a direction for conferment of temporary status by way of O.A.No.140 of 2000 disposed of on 27.7.2001. In the earlier application also the applicants claimed that the applicant Nos.1 and 3, namely Shri Prabir Kumar Banerjee and Shri Sambhu Chakraborty were engaged as casual labourers under the SDE (Phones), Nagaon Telephone Exchange on daily wage basis from 16.7.1993. The applicant No.2, namely Shri Sibu Sankar Kundu was engaged as casual labourer on daily wage basis on and from 1.9.1993. The applicants also mentioned that though they were engaged as casual workers, they were entrusted with the job of Air Conditioner Operator and they were paid daily wages in terms of the prescribed rate for the casual workers. On consideration of the materials on record, it was held that the applicants were working as casual labourers and not as contract labourers and therefore, they were also entitled for consideration for conferment of temporary status in the light of the prevailing scheme. Accordingly the respondents were directed to consider their claim for conferment of temporary status. By the impugned order dated 15.2.2002, the authority rejected the claim of the applicants for conferment of temporary status. Hence this application assailing the legality and validity of the order dated 15.2.2002. The applicants in this application, therefore,

prayed for setting aside of the above impugned order and also for conferment of temporary status in the light of the prevailing scheme.

3. I have heard Mr M. Chanda, learned counsel for the applicants and also Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing on behalf of the respondents. By the impugned order dated 15.2.2002 the respondent authority refused the claim of the applicants for conferment of temporary status on two grounds. In the order itself the respondent authority indicated that for conferment of temporary status of the casual worker, one must fulfil two conditions: (a) the casual worker must be in service on 1.8.1998 and (b) the casual worker must have completed 240 days in a year during the engagement period. According to the respondents the service of the applicants were terminated on 10.7.1998 and the applicants were engaged on fresh contract with effect from 1.8.1998. The applicants, since could not fulfil the requirements mentioned above were not conferred with temporary status. The authority also mentioned that the applicants were not allotted any fixed duty, i.e. eight hours per day, as per verbal contract and the payment made to them was a lumpsum amount of Rs.1500 per month, which was enhanced to Rs.1650 per month and not the prevailing departmental rate. Therefore, the claim of the applicants could not be considered. Three separate orders were passed in case of the three applicants of similar nature. There is littled variation in the order of the applicant Nos.2 and 3, wherein it was shown that the engagement of these two applicants came to an end on 20.7.1998 due to the fresh contract that the department

entered.....

entered into with M/S Sudarshana Cooling Firm, Nagaon with effect from 1.8.1998. In the written statement the respondents reiterated the stand mentioned in the impugned order. In the written statement the respondents annexed the certificate issued by the J.T.O. upto February 1996. Even the certificate relied upon by the respondents indicated that the these applicants were indeed working under the respondents in ILT-2040 Exchange as Air Conditioner Operator on daily wage basis and payment was made in ACG-17 since 1993. On the own showing of the respondents, the applicants worked for three hundred and sixtyfive days in a year in the years 1994 and 1995 without giving any rest day. They have not shown anything as regards 1997 onwards. An affidavit of the Sub-Divisional Engineer (Internal/Construction) under the Telecom District Manager, Bharat Sanchar Nigam Limited, Nagaon is also annexed to the written statement. In the affidavit the deponent indicated that these three persons were working as Package Type A/C Operator in the Nagaon Exchange. The deponent further indicated in the affidavit that the certificates were countersigned by him and that he recorded the number of days worked in each year by the three persons. The respondents chose not to produce any records.

4. I have perused the sanction order whereby the Telecom District Engineer, Nagaon accorded for payment of wages to the S.D.E. (Construction), Nagaon who swore the affidavit, as Temporary advance under Rule 123 of FHB Vol.III Part-I vide Memo dated 1.1.1998, 14.8.1998, 5.6.1998 and 8.9.1998 (Annexure 2 series to the application), which included the wages of the A/C Operators for the period December 1997. In the year 1998

it.....

it was shown as Operational charges of A/C Plant. The connected documents also indicated that those were paid to these persons as wages. The following communication bearing No.ML-3000/OP/98-99/83 dated 22.9.2998 is revealing:

"To

Sri Sibu Kundu
M/S Sudarshna Cooling Centre & Electricals
R.K. Road, Nagaon (Assam),
Pin-782001.

Subject : Round the clock operational Contract for all days in a week of 2X7.5 TR Package Type A/C Plant at Telephone Exchange, Nagaon.

Reference : Your offer No.Nil dated 24-8-98

Dear Sir,

Your above referred offer for the round the clock operation on all days in a week of 2X7.5 TR Package Type A/C Plant at Telephone Exchange, Nagaon at Rs.8000/- (Rupees Eight thousand) only P.M. is hereby accepted for a period of one year w.e.f. 1.9.98 as per terms and conditions given below:

TERMS AND CONDITIONS

- 1) You will be responsible for manning and operation of the package type A/C Plant for Telephone Exchange Building at Nagaon round the clock on all days in a week.
- 2) The Plant should be operated as per maintenance manual. The relevant log sheet/log book for the A/C Plant will be maintained by you and same should be submitted every week to the SDE (Construction)/Nagaon or any other to whom the SDE (Cons) enmarked for the purpose for checking the record.
- 3) The operation of A/C Plant cover all recommended routine daily/weekly/monthly/half yearly/annually operation if any as per operation manual.
- 4) All labour charges for operation are included in the contract.
- 5) You are also responsible to maintain a room temperature of 20 - 2C and relative humidity 40 to 60% in all conditions in the Exchange room and shall be confirmed by the SDE(Construction) on the bills claimed by you. For this purpose necessary copies of log entries attested by the SDE (Cons), Nagaon should be forwarded to the TDM, Nagaon.
- 6) No rate enhancement of any type will be permissible during the currency of the contract i.e. one year (W.e.f. 1.9.98 to 31.8.99).

7) Period of contract for 12 (twelve) months. This contract is valid for the period one year from the date 01.09.98 to 31.08.99.

INSPECTION

The CGMT of Assam Telecom Circle, Guwahati or any of his representative may inspect the operation of the Plant at any time without giving any prior intimation.

PENALTY

As the said equipment is under operation with you, you will be liable to a suitable penalty if there is any damage and theft of the said equipment during the terms of the contract. Undue shut down of the Plant due to your faulty workmanship or mismanagement etc. are may be decided by the SDE(Cons), Nagaon mutual basis will cause deduction from your progressive bill.

The decision of the SDE(Cons), Nagaon for such deduction will be final and conclusive.

TERMS OF PAYMENT

The payment for the ongoing month will be made within one month of succeeding month possibly by Accounts Payee cheque payable to M/S Sudarshna Cooling Centre & Electricals against the prereceipted invoice on satisfactory completion of work in the month. The proforma invoice bills in duplicate are to be rooted through SDE(Cons), Nagaon within 5 days of completion of succeeding month.

You may indicate the name and address of the technicians and other representatives for issue of gate pass for security purpose.

The receipt of the order may please be acknowledged and acceptance letter may be sent.

....."

5. In the list of poayment of daily wages of TCM A/C Operators the names of these applicants regularly appeared. I have also perused the communiction No.ESTT.9/12/ dated 27.8.1998 issued by the Deputy General Manager (Admn.), Guwahati to the concerned TDMs. By the said communication the authority asked for the information regarding number of casual labourers working not yet conferred temporary status for a period of more than 240 days in the respective SSAs as per authenticated record in the enclosed proforma. In the said

communication.....

communication the authority amongst others also asked from the TDM, Nagaon the detailed particulars of the casual labourers. The said communication included the names of these three applicants showing them to have been working as regular casual labourers. The aforementioned communication dated 27.8.1998. annexed to the O.A. is not in dispute.

6. The materials on record clearly indicated that these applicants were discharging duties as casual labourers under the respondents even in August 1998 and the label 'contract labourers' that was all along sought to be put by the authority cannot change the character of these applicants/casual labourers. The issue was already adjudicated upon in the earlier O.A. No.140 of 2000 disposed of on 27.7.2001, which attained its finality. There is no justification for the respondents in the set of facts and circumstances in not conferring temporary status to the applicants on the norms cited above. The order dated 15.2.2002 passed by the respondents is accordingly set aside and the respondents are directed to take necessary steps for conferment of temporary status to the applicants in the light of the decision rendered in O.A.No.140/2000, keeping in mind the findings and observations made in this O.A. The respondents are directed to complete the exercise with utmost expediency, preferably within three months from the date of receipt of the order.

7. The application is allowedt to the extent indicated. There shall, however, be no order as to costs.



(D. N. CHOWDHURY)
VICE-CHAIRMAN

Central Administrative Tribunals
 Central Administrative Tribunals
 27 MAR 2002
 Guwahati Bench

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

(An Application under Section 19 of the Administrative Tribunals Act,
1985)

Title of the case : O.A. No. 105/2002

Sri P.K.Banerjee & Ors. : Applicant

-versus-

Union of India & Others : Respondents.

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Filed by

Date : 27.3.2002

Advocate

14
 Filed by the applicant
 through advocate P.K.
 G.C. Chakravart on 27.3.2002

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act,
1985

O.A. No. 105/2002

BETWEEN :

1. Shri Prabir Kumar Banerjee,
S/o Anil Kumar Banerjee,
A/C Operator (Casual labour),
New Telephone Exchange,
Nagaon, Assam.
2. Shri Sibu Sankar Kundu,
S/o Late Sailendra Narayan Kundu,
A/C Operator (Casual labour),
New Telephone Exchange,
Nagaon, Assam.
3. Shri Sambhu Chakraborty,
S/o Shri Manmath Chakraborty,
A/C Operator (Casual labour),
New Telephone Exchange,
Nagaon, Assam

.....Applicants
-AND-

1. The Union of India,
Ministry of Communication,
Dept. Of Telecom, New Delhi,
(represented by the Secretary,
Telecom Commission, New Delhi).

Prabir Kr Banerjee/

2. The Chief General Manager,
Assam Telecom Circle,
Ulubari, Guwahati.

3. The Telecom District Manager,
Nagaon Telecom district,
Nagaon, Assam.

4. The Sub-Divisional Engineer (Cons.)
Nagaon Sub-Division,
Nagaon, Assam.

5. Sri S.C. Topadar,
Divisional Engineer (P & A)
Telecom District, Nagaon.

6. Shri Pankaj Das
Telecom District Manager,
Nagaon, Telecom District,
Nagaon, Assam.

..... Respondents

DETAILS OF THE APPLICATION

Particulars of orders against which this application is made.

This application is made against the impugned orders issued under letter dated 15.2.2002 (Annexure 6 series) whereby the claim of the applicants for grant of temporary status have been rejected in total violation of the Hon'ble Tribunal's judgment and order dated 27.7.2001 passed in O.A. 140/2000 and also praying for a direction upon the respondents to confer temporary status to the applicants in terms of the direction contained in judgment and order dated 27.7.2001 with all consequential service benefits.

Prabir K. Banerjee

2. Jurisdiction of the Tribunal

The applicants declare that the subject matter of his application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declare that this application is filed within the limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

4.1 That the applicants are citizen of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicants beg to state that the grievances and reliefs sought for in this application are common and as such the applicants pray for grant of permission under section 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 for applying jointly.

4.3 That the applicants beg to state that they have been engaged as Casual Workers (A/C Operator) under SDE(Phones), Nagaon Telephone Exchange, Nagaon on daily wages basis since 1993 w.e.f. the dates as shown below :-

<u>Sl. No.</u>	<u>Name</u>	<u>Date of engagements as Casual labourer.</u>
01.	Sri Prabir Kr. Banerjee	16.07.1993
02.	Sri Sibu Sankar Kundu	01.09.1993
03.	Sri Sambhu Chakraborty	16.07.1993

Prabir Kr Banerjee

It is stated that although the applicants were engaged as Casual Workers but as a matter of fact, they have been entrusted with the job of Air Conditioner Operators and the payment of daily wages were regulated in terms of the rates prescribed for the Casual Workers although the nature of job entrusted to them were superior to that entrusted to other Casual Workers which would be evident from the letter bearing No. E/53/75 dated 14.7.1997 and also from the certificates issued by the SDE (Phones), Nagaon as well as JTO, Nagaon, Telephone Exchange wherein the number of days of each applicant since 1993 has been shown. It is also evident from the above certificates that all the applicants have worked on daily wages basis and their payments have been made under the ACG-17 system. It is also categorically certified by the SDE that they have been engaged on daily wages basis as casual workers in the letter dated 14.7.1997 through which the case of the three applicants have been forwarded by the SDE, Nagaon stating inter alia that they have been engaged to perform work on contract basis. However all the applicants have been recommended for grant of temporary status.

Copy of the letter dated 14.7.1997 issued by the SDE(Cons.) Nagaon, as well as the certificates issued by the SDE (C) and JTO, Nagaon Telephone Exchange are annexed hereto and the same are marked as **Annexure-1 series.**

4.4 That you applicants beg to state that all the three applicants have continuously working under Sub divisional Engineer on daily basis on same terms and conditions as casual workers without any break till 31.8.1998. However, in the month of September, 1998 they have been forced to work on contract basis as A/C Operator at the instance of the SDE (Cons.), Nagaon as because the present applicants at the relevant time had filed an application before this Hon'ble Tribunal for grant of Temporary Status as well as regularisation which was registered as O.A. No. 112/98. It is unfortunate that the respondents have resorted to such illegal

Prahlad K. Banerjee

action which forced the applicants to work on contract basis as because they approached the Hon'ble Tribunal, Guwahati Bench for their job security by way of filing O.A. No. 112/98 under Section 19 of the Administrative Tribunals Act, 1985 praying for a direction for grant of temporary status and regularisation. It is also relevant to mention here that although no specific terms and conditions is laid down for such contract but the respondents termed them as contract workers in order to avoid future litigation as well as to deny their valuable rights for regularisation and for grant of temporary status.

The applicants finding no other alternative started discharging the same job on contract basis as the respondents have termed them as contract workers in the same establishment of Nagaon Telephone Exchange. They are still working as such.

4.5. That your applicants also beg to state that the TDM, Nagaon vide his letter bearing No. A-12/Ty.Adv/SDE(C) NCG/97-98/82 dated 1.1.1998 sanctioned wages for four A/C Operators to a lump sum amount of Rs. 6,600/- for the month of December, 1997 wherein in the appendix it is categorically stated that the said amount of Rs. 6,600/- is required for payment of daily wages to A/C Operators for the month of December 1997 and also indicated that this amount is meant for fixed allotment of fund. Similarly on 14.8.98 a consolidated amount of Rs. 6,600/- again sanctioned vide TDM letter bearing No. A-12/TY. Adv/SDE(Cons.) NCG/97-98/21 dated 14.8.1998 for wages for the month of July, 1998. Again it would be evident that similar sanction of fund is granted by the TDM, Nagaon Telecom District Manager vide his letter dated 8.9.1998 and the appendix therein further establishes the fact that the payment has been made to the present applicants after obtaining their signature in the payment roll.

Therefore it appears from the above sanctioned letters of the TDM that the requirement of A/C Operators of regular nature of work and as such the present applicants who are engaged on casual

Prashid Kr Banerjee

basis since 1993 are working till date continuously without any break in the said establishment of Telephone Exchange, Nagaon under the Telecom District Manager, have acquired a valuable and legal rights for grant of Temporary status as well as for regularisation of their services. However, in order to deny the benefit of grant of temporary status as well as their regularisation forced them to work on contract basis when all the three applicants have approached the Hon'ble Tribunal through O.A. No. 112/98, although payment has still been made/regulated on daily wages basis but the authority termed their job as contract workers. It is further evident from the letter of SDE (Construction) Nagaon, bearing letter No. E24/5 dated 5.6.98 addressed to the Divisional Engineer (PA) Office of the TDM, Nagaon wherein the SDE stated that the job of A/C Plant Operation are of regular nature and requested the Divisional Engineer to provide man power to the section for smooth maintenance and it is also certified in the said letter dated 5.6.98 that no operational contract has been offered to any private parties till date whereas the same SDE in his letter dated 14.7.97 while forwarding the case of the applicants for grant of temporary status in the remark column it is stated that the applicants have been engaged on contract basis whereas in his letter dated 5.6.98 there is a categorical mention that the A/C work has not been offered to any private party. As such it is established beyond all doubts by their own statements/documents that the present applicants are still working on daily payment of daily wages is being made to each of the applicants and it is also declared by the authority that the work are of regular nature.

Copies of the sanctioned letters dated 1.1.1998, 14.8.1998, 5.6.1998 and 8.9.1998 are annexed hereto and the same are marked as **Annexure-2** series.

Praher Kr Banerjee

4.6 That your applicants beg to state that the Original Application filed by the present applicants before the Hon'ble Tribunal which was registered as O.A. No. 112/98 and the same has been decided by the Hon'ble Tribunal on 31.8.1999 with the following directions. The relevant portion of paragraphs 6,7 and 8 are quoted below :

"6. We have heard Mr. B.K.Sharma, Mr. J.L.Sarkar, Mr. I. Hussain and Mr. B. Malakar, learned counsel appearing on behalf of the applicants and also Mr. A.Deb Roy, learned Sr. C.G.S.C. and Mr. B.C.Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents. The learned counsel for the applicants disputed the claim of the respondents that the Schemes was retrospective and not prospective and they also submit that it was up to 1989 and then extended up to 1993 and thereafter by subsequent circulars. According to the learned counsel for the applicants the Scheme is also applicable to the present applicants. The learned counsel for the applicants further submit that they have document, to show in this connection. The learned counsel for the applicants also submit that the respondents cannot put any cut off date for implementation of the Scheme, in as much as the Apex Court has not given any such cut off date and had issued direction for enforcement of temporary status and subsequent regularisation to those casual workers who have completed 240 days of service in a year.

7. On hearing the learned counsel for the parties we feel that the applications require further examination regarding the factual position. Due to the paucity of material it is not possible for this Tribunal to come to a definite conclusion. We, therefore, feel that the matter should be re-examined by the respondents themselves taking into

consideration of the submissions of the learned counsel for the applicants.

8. In view of the above we dispose of these applications with direction to the respondents to examine the case of each applicant. The applicants may file representations individually within a period of one month from the date of receipt of the order and, if such representations are filed individually, the respondents shall scrutinise and examine each case in consultation with the records and thereafter pass a reasoned order on merits of each case within a period of six months thereafter. The interim order passed in any of the case shall remain in force till the disposal of the representation."

In view of the above judgment the present applicants submitted their representations individually stating detail therein as regards their engagement under the respondents and also prayed for grant of temporary status as well as for regularisation vide their representation dated 12.10.1999. In this connection it is relevant to mention here that the applicants have submitted their representations within the stipulated period of one month from the date of receipt of the said judgment and order. The Telecom District Manager, Nagaon, Assam vide his letter bearing No. E-182/Cons Case/99/00/28 dated 11.11.99 directed to all the concerned SDEs including the SDE (Cons) Nagaon for sending a detail report and particulars of the casual Mazdoor including the present applicants. Subsequently the Deputy General manager (Admn.), office of the Chief General Manager, Telecom, Assam Circle vide their letter bearing No. STES-21/207/4 dated 27.10.99 informed the TDM, Nagaon to submit report of casual mazdoors/labourers containing notes together with the complete information on or before 30.11.1999 positively. Accordingly so far the applicants knowledge goes the TDM, Nagaon sent the report

which was in fact submitted by SDE (Cons.), Nagaon, in this said note it is stated by the SDE (Cons) Nagaon that all the three applicants are in fact working on contract basis and denied the fact that they have been engaged on casual basis although the documents enclosed above abundantly makes it clear that they have in fact worked on casual basis since July, 1993. In this connection it is relevant to mention here that SDE, Nagaon as well as the TDM although sent the detail particulars as desired by the office of the Chief General Manager, Guwahati but in fact turned down their claim by stating that they are working on contract basis. It is stated that in spite of best efforts the applicants could not obtain the copy of the letter which was issued by the SDE/TDM as mentioned above therefore Honble Tribunal be pleased to direct the respondents to produce relevant records before the Hon'ble Tribunal for perusal of the Hon'ble Tribunal.

AS Copy of judgment and order dated 31.8.99 representations ⁱⁿ dated 31.8.99 ~~are~~ are annexed as **Annexure-3**
Respectively.

4.7 That it is stated that the applicants being disappointed due to inaction, laches on the part of the respondents regarding grant of temporary status again approached this Hon'ble Tribunal through Original Application No. 140/2000 praying inter alia for grant of temporary status. The said Original Application was duly contested by the respondents by filing written statement. In the said written statement the present respondents inter alia contended that the applicants were allowed on verbal contract basis with effect from 16.7.1993 and said verbal contract came to an end with effect from 31.7.1998 followed by a written contract with M/s Sudarshana Cooling Firm. In paragraph 5 of the said written statement it was also stated that the engagement of the applicants as contract labourers for a job was discontinued with effect from July 1998 last and the job was offered to Private Firm M/s Sudarshana Cooling Firm. The Hon'ble Tribunal after detail

scrutiny of such materials on record and on hearing the counsel, for the parties held as follows :

"4. On considerations of the materials on records it is difficult to accept that the applicants were engaged as Contract Labourers and as not Casual Labourers. The document dated 14.7.1997 clearly indicated that the applicants were allowed to discharge duties as Casual Labourers. In the absence of any other materials it is difficult to accept the contentions of the respondents.

5. We therefore hold that the applicants are also entitled for consideration of absorption in terms of Casual Labourers (Grant of temporary Status and Regularisation) scheme, 1989 of Telecom Department. Needless to state that Casual Labourers recruited after 29.11.1989 and up to 1.9.1993 are also entitled to confer temporary status in view of the communication to this extent.

6. We have heard Mr. M.Canda, learned counsel for the applicants and Mr. A.Deb Roy, learned Sr.C.G.S.C. for the respondents. Upon hearing the learned counsel for the parties and upon considering all the materials on records, we have reached the above findings.

7. The respondents are directed to consider the case of the persons who were engaged as Casual Labourers. Accordingly, we direct the respondents to consider the case of the applicants for granting temporary status within three months from the date of receipt of the copy of the order.

With this, the application is allowed.

There shall, however, be no order as to costs."

In view of the above categorical finding and direction of the Hon'ble Tribunal there was no scope on the part of the

Prabir Kr Banerjee

respondents to reject the claim of the applicants for grant of temporary status as because the ground earlier raised by the respondents in their written statement has already been rejected by the Hon'ble Tribunal in its judgment and order dated 27.7.2001.

A copy of the written statement filed by respondents in O.A. 140/2000 and the judgment and order dated 27.7.2001 are annexed as **Annexure-4 & 5** respectively.

4.8 That most surprisingly the present respondents particularly the respondent no. 5 without application of mind and in total disregard to the direction contained in the judgment and order dated 27.7.2001 in O.A. 140/2000 issued the impugned orders bearing letter nos. E-182/CAT/Pt-II/72 dated 15.2.2002, E-182/CAT/Pt-II/75 dated 15.2.2002, E-182/CAT/Pt-II/73 dated 15.2.2002 rejected the claim of the applicants for grant of temporary status firstly on the alleged ground that the applicants were not in service as on 1.8.1998, secondly on the ground that their engagement came to an end by way of termination on 20.7.1998 due to a fresh contract that the department entered into with M/s Sudarsana Cooling firm with effect from 1.8.1998 and also on the alleged ground that they were not allotted any fixed duty as per verbal contract and the payments were made at a lump sum rate but not on the prevailing departmental rate that a normal daily rated Mazdoor has been paid. The above alleged grounds of rejection of temporary status is after thought of respondent nos. 5 & 6. It is categorically submitted that the respondent nos. 5 has rejected the claim of the applicants in total violation of the judgment and order dated 27.7.2001 in O.A. No. 140/2000 without consultation of the records available with the custody of the respondent nos. 5 and 6. the impugned order of rejection dated 15.2.2002 has been passed only for the shake of rejection in total disregard to the judgment referred to above.

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It is stated that the grounds are now raised by the respondents quite different from the grounds earlier taken by the present respondents and that too after passing of the judgment and order dated 27.7.2001 by the Hon'ble Tribunal.

It is submitted that the judgment and order dated 27.7.2001 has attained its finality and there is no scope on the part of the respondents to raise any kind of new pleas to avoid the implementation of the judgment and order dated 27.7.2001. The respondents are barred by law of estoppel to raise any such plea as stated above. As such the impugned orders dated 15.2.2002 (Annexure-6 series). *are liable to be set aside and quashed*

Copies of the impugned order dated 15.2.2002 are annexed as Annexure- 6 series.

4.9 That your applicants beg to state that the contention of the respondents as alleged in the impugned order that the applicants were not in engagement as on 1.8.1998 and their services were terminated with effect from 10.7.1998 are totally false and misleading and the same is also contrary to their own records. In this connection it may be stated that the applicants receipt payment of wages for the months of July and August, 1998 as casual workers and the sanction of same were accorded by the Divisional Engineer (P & A) vide letter No. A12/Ty. Advance/SDE(Cons): NGG/98-99/21 dated 14.8.1998 and vide letter No. A 12/Ty. Advance/SDE(Cons.)NGG/98-99/21 dated 8.9.1998 respectively. Therefore the statement of the respondents made in the impugned order dated 15.2.2002 so far termination of services of the applicants is totally false and deliberate to mislead the Hon'ble Tribunal.

That the contention of the respondent no. 5 regarding a fresh contract entered into with M/S. Sudarsana Cooling Firm with effect from 1.8.1998 is also contrary to their own records which would be evident from the letter bearing no. ML-3000/OP/98-99/83

dated 22.9.1998 wherein the respondent no.5 entered into a contract with M/s Sudarsana Cooling Centre and Electricals, R.K.Road, Nagaon Road, Nagaon, clearly indicated in the preamble of the contract agreement dated 22.9.98 that the contracted is accepted for a period of one year with effect from 1.9.1998 as per the terms and conditions laid down therein. Therefore the contention of the respondents that a fresh contract is entered into with effect from 1.8.1998 with the aforesaid firm is totally false and misleading and the same has been alleged to avoid the implementation of the judgment and order dated 27.7.2001.

So far allegation of fixed duty hours it is stated that this plea was never raised earlier in the written statement filed by the respondents in O.A. No. 140/2000, as such the respondents are barred by law of estoppel to raise any such plea at this stage, more particularly after the pronouncement of the judgment and order dated 27.7.2001.

However, so far duty hours are concerned for manning and operation of the AC Plant for Telephone Exchange at Nagaon, it would be evident from the terms and condition no.1 of the agreement dated 22.09.1998, that the applicants required to serve round the clock on all days in a week/month/year. The relevant portion of the agreement-dated 22.9.1998 is quoted below:

TERMS AND CONDITIONS

1. You will be responsible for manning and operation of the package type A/C Plant for Telephone Exchange Building at Nagaon round the clock on all days in a week.
2. The Plant should be operated as per maintenance manual. The relevant log sheet/log book for the A/C Plant will be maintained by you and same should be submitted every week to the SDE

(Construction/Nagaon or any other to whom the SDE (Cons) earmarked for the purpose for checking the record.

3. The operation of A/C Plant cover all recommended routine daily/weekly/monthly/half yearly/annually operation if any as per operation manual.
4. All labour charges for operation are included in the contract.
5. You are also responsible to maintain a room temperature of 20+2C and elative humidity 40 to 60% in all conditions in the Exchange room and shall be confirmed by the SDE (Construction) on the bills claimed by you. For this purpose necessary copies of log entries attested by the SDE (Cons.) Nagaon should be forwarded to the TDM, Nagaon.
6. No rate enhancement of any type will be permissible during the currency of the contract i.e. one year (W.e.f. 1.9.98 to 31.8.1999).
7. Period of contract for 12 (twelve) months. This contract is valid for the period of one year from the date 01.09.98 to 31.8.99."

It is quite clear from the above terms and conditions that how the services of the present applicants were utilized by the respondents during the period from 16.7.1993 to 31.8.1998 i.e. the period prior to enter into the contract by the present respondents with M/s Sudarsana Cooling Firm, Nagaon. On the other hand it can be said that the services of the applicants were utilized in the same manner as stipulated in the terms and conditions prior to the

agreement dated 22.9.1998 when the applicants were engaged by the respondents on daily wages basis as casual worker.

Moreover, duty chart/duty roster also used to be maintained by the Chief Technical Supervisor, Telephone Exchange, or by the J.T.O. in charge under their strict supervision and the individual applicant required to serve more than eight hours round the clock on all days in a week. As such, contention of the respondents at this belated stage that the applicants do not have any fixed duty hours is contrary to their own records.

Copy of the duty chart/duty roster of the relevant period referred to above when the applicants were serving as casual workers are enclosed for perusal of the Hon'ble Tribunal.

With regard to the allegation that the applicants were not paid their wages on the prevailing departmental rate like any other normal daily rated mazdoor, such statement is highly arbitrary, and the same establishes the fact that the respondents adopted unfair labour practice which is contrary to the law and rule laid down by the Government of India from time to time. This very statement goes against the respondents and the same need not be replied to. However it is stated that even otherwise the aforesaid allegation so far departmental rate of daily wages is concerned are totally false and misleading and the same is contrary to their own records. A mere perusal of the letter bearing No. ACE-2/Accts./96-97/12 dated 16.12.1996 issued by the Telecom District Engineer, Nagaon Telecom District, Nagaon wherein it was specifically stated that the rate of wages to be paid to the daily labourers should not be more than Rs. 51/- (Rupees fifty one) and in the enclosed bill appended therewith for month of January 1997 would make it clear that the applicants alongwith one Sri Pabitra Mahanta Daily Rated Mazdoor had been paid wages at the rate of Rs. 51/- per day. Therefore the allegation of the respondents that the applicants were not paid at the prevailing departmental rate is a misleading statement.

Praloy Kr Banerjee

It appears that the respondents particularly the respondent no.5 made all efforts deliberately just to avoid the implementation of the Hon'ble Tribunal's order dated 27.7.2001 for grant of temporary status to the applicants and levelled the false allegations against the applicants to deny the legitimate claim of the applicants for grant of temporary status. Therefore the Hon'ble Tribunal be pleased to impose heavy penalty and costs upon the respondent no.5 for making such deliberate false statement before the Hon'ble Tribunal solely with the intention to deny the legitimate benefit of temporary status to the applicants. As such, the impugned orders dated 15.2.2002 (Annexure-6 series) are liable to be set aside and quashed.

Copy of the terms and agreement dated 22.9.1998, letter dated 16.12.1996 including pay bill for the month of January, 1997, duty chart for the month of June, 1996, March, 1998 May, 1998, are annexed as Annexure-7,8 and 9 respectively.

4.10 That in pursuance of the letter bearing No. Estt-9/12 dated 27.8.1998 forwarded the case of the present applicants for grant of temporary status by the S.D.E. (Civil), Nagaon with reference to letter No. E-167/Part time/Casual Mazdoor/5 dated 31.8.1998 to the Telecom District Manager, Nagaon, wherein the S.D.E. categorically stated that the nature of ^{Job} ~~Job~~ entrusted to the applicants are of regular nature and they have been engaged since July 1993 onwards. It is fairly admitted that they are casual mazdoors and working days also indicated since 1993 to June 1998 wherein the number of working days more than ^{than} 240 days shown in respect of each applicant during the calendar year 1994 to 1997. Therefore, the applicants have acquired a valuable and legal rights for grant of temporary status as well regularisation under the respondents.

It would be further be evident from the letter of S.D.E. (Cons) bearing No. E24/5/ dated 5.6.1998 wherein it is informed

to the TDM, Nagaon that requirement of manpower for regular maintenance work of Nagaon Telephone Exchange and justified the requirement of the staff. In this connection it is also stated that no operational contract has been offered to any private party till date, as such contention of the respondents that the applicants were not in engagement as on 1.8.1998 is contrary to their own records rather wages had been paying to the applicants as regular casual Mazdoor till 31.8.1998. However, after 31.8.1998, the applicant had been forced to work on contract basis through M/s Sudarsana cooling Firm, Nagaon, but the nature of works and duties and responsibilities were remain same. As such applicants are entitled to grant of temporary status and regularisation. Even assuming but not admitting that the applicants were working on contract basis even then they are entitled to grant of temporary status and regularisation.

Copy of the letter dated 27.8.1998, along with the recommendation of the cases of the applicants with detail particulars issued by the S.D.E. (Cons.), Nagaon, is annexed as **Annexure-10** ~~respectively.~~

- 4.11 That your applicants finding no other alternative have been forced to approach the Hon'ble Tribunal due to mala fide exercise of power by the respondent no.5 rejecting the claim for grant of temporary status to the applicants, levelling deliberate false statement and allegations which are contrary to their own records. Therefore, Hon'ble Tribunal be pleased to direct the respondents for grant of temporary status and regularisation of the applicants by setting aside the impugned orders dated 15.2.2002 (Annexure-~~15~~¹⁶ series). Be it stated that the applicants have fulfilled all the requirements for grant of temporary status in terms of the Scheme of casual labourers (Grant of temporary status and regularisation) 1989 of Telecom department.
- 4.12 That this application is made bona fide and for the cause of justice.

Prabir Kr Banerjee

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned orders dated 15.2.2002 (Annexure 8) have been passed with a deliberate attempt to avoid implementation of the judgment and order dated 27.7.2001 passed in O.A. No. 140/2000.

5.2 For that the allegation/grounds raised in the impugned order dated 15.2.2002 is after thought and the same is false and contrary to their own records, and the respondents are now barred by law of estoppel to raise any such fresh allegations after the pronouncement of the judgment and order dated 27.7.2001 in O.A. 140/2000 in order to avoid the implementation of the same.

5.3 For that each and every allegation levelled against the applicants in the impugned order dated 15.2.2002 is false, deliberate and contrary to the records, as such the respondent nos. 5 and 6 are liable for making such deliberate statement before this Hon'ble Tribunal.

5.4 For that the applicants have rendered 240 days of service in each calendar year as required under the scheme since 1994 onwards, moreover the applicants have been entrusted with regular nature of works as indicated in the recommendation letter dated 31.8.1998 issued by the S.D.E.(Cons.) and the said fact is also revealed from the letter dated 5.6.1998.

5.5 For that the applicants have acquired valuable and legal right for grant of temporary status and regularisation in terms of the relevant scheme issued by the Department of Telecommunication from time to time.

5.6 For that it is evident from the records that the applicants have been paid wages all along at the departmental rate and they were very much in service under the respondents as on 1.8.1998 and

rendered more than eight hours in a day round the clock in all days of a week/month.

- 5.7 For that the job for which the applicants have been engaged since July 1993 onwards is of perennial nature as such the respondents are duty bound to grant temporary status under the relevant scheme issued by the Telecom Department from time to time.
- 5.8 For that the documents issued by the respondents from time to time clearly establishes beyond all doubts that the present applicants have been engaged on daily wages basis and the applicant are also serving under the respondents after 131.8.1998, as such they are entitled to grant of temporary status and regularisation.
- 5.9 For that the grant of temporary status cannot be denied to the applicants on the alleged ground that they have been engaged on contract basis with effect from 1.9.1998.
- 5.10 For that the present applicants are still working under the respondents and the wages are paid by the respondents through M/s Sudarsana Cooling Firm.
- 5.9 For that the respondents utilizing the services of the applicants through Sudarsana Cooling Firm with effect from 1.9.1998 with an ulterior motive just to deny the benefit of temporary status and regularisation to the present applicants.

6. Details of remedies exhausted:

The applicants declare that they have availed of all remedies available within their reach, as would be revealed from Paragraphs 4 above and they have no other alternative and other efficacious remedy left, than to file this application.

7. Matters not previously filed or pending with any other court:

The applicants further declare that they had previously filed an Original Application No. 112/98 and O.A.No. 140/2000 and the same was decided by the Hon'ble Tribunal in favour of the applicants directing the respondents to consider the case of the applicants for granting temporary status within three months from the date of the decision. But the respondents in total disregard to the order of the Hon'ble Tribunal dated 27.7.2001 rejected the claim of the applicants. The applicants further declare that no such writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances stated above, the applicant humbly prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

8.1 That the impugned ^{orders} issued under letter Nos. nos.E-182/CAT/Pt-II/72 dated 15.2.2002, E-182/CAT/Pt-II/75 dated 15.2.2002, E-182/CAT/Pt-II/73 dated 15.2.2002 ~~dated 15.2.2002~~ (Annexure- 6) Series) be set aside and quashed.

8.2 That the Hon'ble Tribunal be pleased to direct the Respondents to grant temporary status to all the three applicants in the light of the direction contained in the judgment and order dated 27.7.2001 passed in O.A. No. 140/2000. and also be pleased the direct the respondents to regularise the service of the applicants.

8.3 Cost of the application.

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8.4 Any other relief or reliefs to which the applicants are entitled to, under the facts and circumstances of the case as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim order prayed for.

9.1 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicants to continue in service in the same capacity till disposal of this application.

10.

This application is filed through Advocate.

11. Particulars of the I.P.O.

i. I.P.O. No.	:
ii. Date of Issue	:
iii. Issued from	: G.P.O., Guwahati.
iv. Payable at	: G.P.O., Guwahati

12. Details of enclosures.

As stated in the Index.

Prabir K. Banerjee

VERIFICATION

I, Shri Prabir Kumar Banerjee, S/o Shri Anil Kumar Banerjee, working as A/C Operator (casual labour basis), New Telephone Exchange, Assam, Nagaon, do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 11 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of March, 2002.

Prabir K. Banerjee

Case for grant of Temporary Status of the Casual
Mazdoor (including working under SDT/DR/DRG).

Sl. No.	Name of Casual Labourer	Father's Name and Qualification	Educational Qualification	St. & Sr Engagement	Nature of Working	Ex. or Working Ship.	Official/Other Status	Particulars of service rendered	Totalance of working (Year wise)				
									1993	1994	1995	1996	1997 Up to June'97
1.	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)					
1.	Sri. Prabir K. Benerjee.	Avil K. Benerjee.	B.A.	16-3-93	Regular nature.	1986. S.E. 120. 291/86.	T.D.O (I/D) 8 A.E. (PA)/DRG.		169	365	365	365	365 181
2.	Shambhu Chintamani Mammoth K. Chintamani	Chintamani	Class VIII	16-7-93	Regular nature.	1995. E.E. no. 1421/95.	— do —		169	365	365	365	365 181.
3.	S. Rajendra Rajkumar	Deben Rajkumar	H.S.L.C	1-10-93	Regular nature.	1983. E.E. no. 108/82.	— do —		92	365	365	365	233 181.
4.	Sri. Sankar Kundu Late Sankar Kundu Chayan Kundu	Late Sankar Kundu	H.S.L.C	1-9-93	Regular nature.	1992. E.E. no. 1085/92.	— do —		122	365	365	366	365 181.

Remarks

The above Casual Mazdores were engaged for operating Pug Exco A/C plant at IIT-2048 exchange/bridge on per verbal approval of the then AMT/DR and TDE/DRG due to abolition of operational contract of A/C plant with 'Blue Star' company to minimise the expenditure (Operational) from Rs. 1.92.00/- to Rs. 52.00/- The engagement was purely on contract basis with monthly fixed expenditure and discontinued the same w.e.f. July'98.

SG. E-63/35. dtd 14-7-98. Forwarded to the TDM/DRG for review of interim and n/a with ref. to E-162/Part-time Casual Mazdores dtd 31-8-98.

Certified that Sri Prabir Kumar Bandyopadhyay
son of Sri Nati Kumar Bandyopadhyay is working in ILT-2048 Exchange
as I/C Operator on daily wage basis from 1993, since 1993 as per
Contract below :

Sl. No.	Year	Month	Days
(1)	1993	July	31
(2)	"	August	31
(3)	"	September	30
(4)	"	October	31
(5)	"	November	30
(6)	"	December	31

Total : 169 days

(7)	1994	January	31
(8)	"	February	28
(9)	"	March	31
(10)	"	April	30
(11)	"	May	31
(12)	"	June	30
(13)	"	July	31
(14)	"	August	31
(15)	"	September	30
(16)	"	October	31
(17)	"	November	30
(18)	"	December	31

Total : 365 days

(19)	1995	January	31
(20)	"	February	28
(21)	"	March	31
(22)	"	April	30
(23)	"	May	31
(24)	"	June	30
(25)	"	July	31
(26)	"	August	31
(27)	"	September	30
(28)	"	October	31
(29)	"	November	30
(30)	"	December	31

Total : 365 days

(31)	1996	January	31
(32)	"	February	29

Total : 365 days

Total : 60 Days

1. S. T. O. B. (P.M.D.)
2. Nagaon 18/11/96

J. T. O. I/D
ILT-2048 Exch
Nagaon.

Certified that Sri Sambhu Chakraborty
son of Sri Manmatha Chakraborty is working in ILT-2048 Exchange
as A/C Operator on daily wage basis by ACG-17, since 1993 as
per details below :

Sl.no	Year	Month	Working days	
(1)	1993	July	16	
(2)	"	August	31	
(3)	"	September	30	
(4)	"	October	31	
(5)	"	November	30	
(6)	"	December	31	
				<u>Total : 169 days</u>
(7)	1994	January	31	
(8)	"	February	28	
(9)	"	March	31	
(10)	"	April	30	
(11)	"	May	31	
(12)	"	June	30	
(13)	"	July	31	
(14)	"	August	31	
(15)	"	September	30	
(16)	"	October	31	
(17)	"	November	30	
(18)	"	December	31	
				<u>Total : 365 days</u>
(19)	1995	January	31	
(20)	"	February	28	
(21)	"	March	31	
(22)	"	April	30	
(23)	"	May	31	
(24)	"	June	30	
(25)	"	July	31	
(26)	"	August	31	
(27)	"	September	30	
(28)	"	October	31	
(29)	"	November	30	
(30)	"	December	31	
				<u>Total : 365 days</u>
(31)	1996	January	31	
(32)	"	February	29	
				<u>Total : 60 days</u>

of 5/2
S. D. E. (Phones)
Nagano 782001

J. T. O. I/D
ILT-2048 Exch
Nagano

Certified that Sri Sibu Sankar Kundu son of
Late Sailendra Narayan Kundu, is working in ILT-2048 Exchange
as A/C Operator on daily basis wage basis by ACG-17 since 1993
as per details below :

Sl.no	Year	Month	Working Days	
(1)	1993	September	30	
(2)	"	October	31	
(3)	"	November	30	
(4)	"	December	31	
				<u>Total : 122 days</u>
(5)	1994	January	31	
(6)	"	February	28	
(7)	"	March	31	
(8)	"	April	30	
(9)	"	May	31	
(10)	"	June	30	
(11)	"	July	31	
(12)	"	August	31	
(13)	"	September	30	
(14)	"	October	31	
(15)	"	November	30	
(16)	"	December	31	
				<u>Total : 365 days</u>
(17)	1995	January	31	
(18)	"	February	28	
(19)	"	March	31	
(20)	"	April	30	
(21)	"	May	31	
(22)	"	June	30	
(23)	"	July	31	
(24)	"	August	31	
(25)	"	September	30	
(26)	"	October	31	
(27)	"	November	30	
(28)	"	December	31	
				<u>Total : 365 days</u>
(29)	1996	January	31	
(30)	"	February	29	
				<u>Total : 60 days</u>

S. D. B. (Phone no)
782001

J. T. O. 111
ILT-2048 Exch
Nagaon.

Annexure-2 (series)

-27-

Annexure-2 (series)

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DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT ENGINEER
NAGAON-782001.

No. A-12/Ty. Adv./SDE(Cons.):NGG/97-98/52

Dated at Nagaon the 01-01-98.

Sanction of the Telecom District Engineer, Nagaon is hereby accorded for payment of Rs. 16,854.00 (Rupees Sixteen Thousand Eight Hundred Fiftyfour)only to Sri J.N.Saikia, S.D.E.(Cons.), Nagaon as Temporary advance under Rule 123 of FHB Vol.III Part-I for the month of January,98 for making disbursement of known amount as detailed below :-

1) Fixed Maintenance	....	....	: 8,500.00
2) Wages of A/C Operators for December,97	....	....	: 6,600.00
3) Wages of One DRM for December,97	....	....	: 969.00
4) Wages of One P/T Worker for December,97	....	....	: 785.00

Total Rs.16,854.00

(Rupees Sixteen Thousand Eight hundred Fiftyfour)only.

Sd/
Telecom District Engineer
Nagaon Telecom District
Nagaon-782001.

Copy to :-

1) The Divisional Cashier, O/o the T.D.Engineer, Nagaon for necessary action.
2) Sri J.N.Saikia, SDE(Cons.)/Nagaon. Since the advance is given for specific disbursement of known amounts the account should be submitted immediately after the disbursements are over so as to enable this office to adjust the account within a month as specified in Rule 127 of FHB Vol.III Part-I.
3) Office copy.

dry
Telecom District Engineer
Nagaon Telecom District
Nagaon-782001.

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2/1/98
CM 28/1/98

Payments of Daily wages to TSMs. A/c OPRs.

Annexure - 2 (b)

DRM (Comp. ground) for the 21/0 Jan'97 SDE(P)/NGO Section.

SL No.	Name and Designation.	No. of days working	Rate	Payable amount	Nature of work, performed	Signature of Payee
1.	Sri. Kushal Baikia. (TSM)	31	Rs. 79.85	Rs. 2475/-	Office work of SDE(P) in the office.	Kushal Baikia.
2.	Worish Das. (TSM)	31	Rs. 79.85	Rs. 2475/-	General office work of IIT-2048, 14 KC DOT and TAX age.	Worish Das.
3.	" Hemakanta Mahanta. (CTSM)	31	Rs. 79.85	Rs. 2475/-	Undergoing P/M training	Hemakanta Mahanta.
4.	" Prabir K. Benerjee. (A/c OPR)	31	on contract basis	Rs. 1650/-	Operating A/c plant.	Prabir K. Benerjee.
5.	" Shambu Chakraborty. (A/c OPR)	31	No -	Rs. 1650/-	- Do -	Shambu Chakraborty
6.	" Sibu Shankar Kundu. (A/c OPR)	31	- Do -	Rs. 1650/-	- Do -	Sibu Shankar Kundu
7.	" Rajen Rajkhowa. (A/c OPR)	31	- Do -	Rs. 1650/-	- Do -	Rajen Rajkhowa.
8.	" Rabindra Mahanta. (DRM)	19	Rs. 51/-	Rs. 969/-	Clerical duty in the office of the SDE(P)/NGO office.	Sri Rabindra Mahanta.

Rs. 14,994/-

Twenty four thousand two hundred ninety four only.

Annexure 18/2

Payment of Daily wages to the A/C operators
8 DRM (Comp. ground) on 00th DEC 92 under SDEC/C/1986.

SL. NO.	NAME/DESIGN.	No. of days working	No. of days absent.	Nature of work performed.	Rate	Payable amount	Signature of Payee
1.	Prabir K. Benerjee. (A/C OPS)	31 days		Operating A/C plant	Rs. 1200/-	Rs. 1200/-	Prabir K. Benerjee
2.	Shambhu Chakraborty. (A/C OPS)		— —	— —		Rs. 1200/-	Shambhu Chakraborty
3.	Sibu Sarker Kundu. (A/C OPS)	31 days		— —	Rs. 1600/-	Rs. 1600/-	S. Sarker Kundu
4.	Rajeev Rajkumar. (A/C OPS)	31 days		— —		Rs. 1600/-	Rajeev Rajkumar
5.	Tabizza K. Mahanta. (DRM)	19 days		Subscriber testing duty.	Rs. 51/-	Rs. 969/-	Tabizza K. Mahanta
						Rs. 2569/-	

Rs. Two thousand five hundred sixty nine/- only.

Witnessed

13

SDE (contd) / wages.

SL No.	Item	Dr. / Account	Fixed Provision	Additional ac fund required.	Remark
1.	Payment Fund to A/S/P (SFixed amount fund)	C-5(2)(3)(1)/32-33 C-1(2)(4)/32-33 C-2(2)(6)/32-33 C-2(6)/wages ac	Rs. 8500/-	Rs. 8500/-	For Dec'93
2.	Payment of daily wages to A/C cleaner Rs. 167-254/- for Dec'93. (Fixed amount fund)	C-2(2)/wages	Rs. 6600/-	Rs. 6600/-	For Dec'93
3.	Payment of daily wages to DRM (Comp. grader) engaged ac SDE for Technical Testing for 12 days work (Rs. 51.12)	C-2(2)/wages	Rs. 969/-	Rs. 969/-	For Dec'93
4.	Payment of daily wages to P/T sweeper ac 167-254/- SDE (C-2(2)/wages work Daily for Dec'93 (Rs. 875 X 3 X 31)	C-2(2)/wages	Rs. 285/-	Rs. 285/-	For Dec'93.
5.	Purchase of Diesel for E/B (Fixed fund).	C-5(2)(3)21	Rs. 10,000/-	Rs. 10,000/-	Fixed monthly fund for Jan'94.
6.	A/S/P information setting up 167-254 and C-DCT Ac to SDE ac.	S310.EC(6) /32-33.	Rs. 10,000/-	Rs. 10,000/-	Work is in progress and in final stage.

Rs. 36,854/-

(Revised till 13.12.93)
Amount being fixed daily

Ac. 5-1/32-33
For 167-254 and C-DCT Ac to SDE ac.

167-254
S310.EC(6)

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON TELECOM DISTRICT
NAGAON-782001.

No. A-12/Fy. Adv./SDE(Cons.); NCIG/98-99/21

Dated at Nagaon the 14-08-98.

Sanction of the Telecom District Manager, Nagaon is hereby conveyed for payment of Rs. 13,386.00 (Rupees Thirteen Thousand Threec hundred Eightysix)only to Sri J.N.Saikia, S.D.E.(Cons.), Nagaon as Temporary advance under Rule 123 of FHB Vol.III Part-I for the month of August,98 for making disbursement of known amount as detailed below :-

- 1) Fixed Maintenance : 6,000.00
- 2) Operational charges of A/C Plant of I.I.T-2048 Nagaon : 6,600.00
- 3) Wage of One P/T Sweeper for the m/o July,98. : 786.00

Total Rs.13,386.00

(Rupees Thirteen Thousand Threec hundred Eightysix)only.

S.D.E.
Divisional Engineer (P&A)
O/O Telecom District Manager
Nagaon-782001.

Copy to :-

- 1) The Divisional Cashier, O/o the T.D.Engineer, Nagaon for necessary action.
- 2) Sri J.N.Saikia, SDE(Cons.)/Nagaon. Since the advance is given for specific disbursement of known amounts the account should be submitted immediately after the disbursements are over so as to enable this office to adjust the account within a month as specified in Rule 127 of FHB Vol.III Part-I.
- 3) Office copy.

D.E.
Divisional Engineer (P&A)
O/O Telecom District Manager
Nagaon-782001.

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दर संचार विभाग
DEPARTMENT OF TELECOMMUNICATIONS

प्रैषादः

From S. D. E. (Construction) Nagoya.

उत्तर देखि रामय धूपया

निम्न राष्ट्रम् दें

In reply
Please quote

शैया गौ

To The D.E.(P&A)

RE: TDM / Nagaon. SUBJECT

Dated at Nagaon the 5/6/98

નંબર ટાઇટલ
No. E-24/3-

Sub:- Requirement of Manpower for
regular mntce. work of ILT-
2048 and MBM's ge, Nagpur.

Ref:- Your NO:- A-1/Accounts/98-99/15-
dtd: 29-5-98.

Kindly refer to your above letter.
In this connection it is requested kindly to provide
Manpower to the Sec. of the IFS for smooth ratee
and performance of the Sec. as mentioned
below : -

<u>S/No.</u>	<u>No. of Manpower reqd.</u>	<u>Nature of job</u>	<u>Remark.</u>
(1)	1	Battery Man - for 2500 Amp./Hrs. Battery - 2 sets.	
(2)	1	Cleaner - Both for 1LT & C-10	
(3)	1	P/T Sweeper - for Xge & office	
(4)	1	Waterman - for Xge, office, & pub	
(5)	1	Chowkidar	operations
(6)	1	Electrical mtee -	Office & Xge
(7)	2	Sub. Line Testing -	Both the Xges
(8)	2	Internal mtee -	Helping JTOs.
(9)	4	A/C Plant operation both for PKg. & window type of both the Xges.	
<u>Total</u>		<u>14 (fourteen)</u>	<u>(No operational contact has been offered to any private par-</u>

93/00
- 29 -
JK

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON TELECOM DISTRICT
NAGAON 782001

Copy of Ex-Adv. Report dated 09.09.98

Dated at Nagaon the 08.10.98

On the application of the Telecom District Manager, Nagaon is hereby accorded for payment of Rs.14,386.00 (Rupees Fourteen Thousand Threec hundred Eightysix)only to Sri J.N.Saikia, SDE(Cons.), Nagaon as Temporary advance under Rule 123 of FHB Vol.III Part-I for the month of September,98 for making disbursement of known amount as detailed below :-

1) Fixed Maintenance	.....	6,000.00	✓
2) Payment of A/C Operation charge for 8/98	.....	7,600.00	✓
3) Waives of P/T Sweeper for August,98	.....	786.00	✓

Total Rs.14,386.00

(Rupees Fourteen Thousand Threec hundred Eightysix)only.

Telecom District Manager
Nagaon Telecom District
Nagaon 782001.

Copy to :-

- 1) The Divisional Cashier, O/o the T.D.Engineer, Nagaon for necessary action.
- 2) Sri J.N.Saikia, SDE(Cons.)/Nagaon. Since the advance is given for specific disbursement of known amount the account should be submitted immediately after the disbursements are over so as to enable this office to adjust the account within a month as specified in Rule 127 of FHB Vol.III Part-I.
- 3) Office copy.

S. D. T. C. P.
Telecom District Manager
Nagaon 782001.

100000/-

Requisition for allotment of fund for the month

06 Aug '98 under SDE (C) / 002. (Fund for Mice and Wages).

Annexure - 2 Scts.

Sl.	Item	Head or account / Estimate	Fixed Provision	Allotment or Fund required	Remarks
1.	Mice fund (Fixed)	C-5 (2)(3)(a) C-1 (2)(4) C-2 (2)(6) C-2(2) wages	Rs. 8500/-	Rs. 8500/-	(a) Requirement to T.M.S. (b) For purchasing cushion carpet for mice (excluding the money + Rs. 500) (c) For purchasing A/C for mice Mice spare for mice plant and battery. (d) Payment bill for mice repairing of A/C plant. (e) Payment of P/T wages to workers on daily basis. (f) Emergency purchase of spare parts not supplied by the concerned office. (g) Disbursement of mice expenditure
2.	Operation charges of Pro type Hc. Plant 0-111-2048/002. (Fixed C-2(2) wages month fund) (CN CONTRACT BASIS)	Rs. 6600/-	Rs. 6600/-	For July '98	
3.	Payment of daily wages to P/T worker of Hc. Plant 0-111-2048/002. (CN CONTRACT BASIS)	Rs. 286/-	Rs. 286/-	For July '98	
				Rs. 15886/-	(Rupees Fifteen thousand eight hundred eighty six only).

Enc. A-1/P-2-111/52-98/23. dtd 5/8/98.

Forwarded to the T.M.S./Sagam for favour
of your kind disposal and as per

S. D. R. Concurious
Revised 16/8/98

48

encash at Sep'93 under SDFC) 1000 (Fund for MFL 8100-).

- 35 -

Annexure - 2
Suz

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①	Poabir	—	700.00 + 250.00
②	Chakriborh	—	700.00 + 250.00
③	Kumaln	—	1600.00 + 250.00
④	Lajkhn.	—	1600.00 + 250.00

$6600.00 + 1000.00$

7600/-

4 Jan 88

1700
230
1950

Terms and condition for Temporary

on CONTRACT basis for

1. This contract is for _____ of _____ hours on per requirement.
2. The duty hours for _____ Departmental Building will be decided as per requirement.
3. The monthly rate of contract shall be Rs. _____ (Rupees _____) only. In case of absent deduction shall be made proportionately.
4. This contract is for the month of _____ and can be terminated at any time during the month without assigning any reason.

I _____ do hereby agree to the above terms and conditions and I hereby offer to undertake the work as mentioned above on a fixed monthly contract.

Signature _____

Signed in presence of Shri _____

Total amount to be paid:-

1. Monthly contract ... :-Rs.
Total :-Rs.

Received from _____

the sum of rupees on account of _____

Signature of witness

Signature of payee



Certified that :-

1. The Departmental Labour was not available against _____
2. The engagement of _____ is absolutely minimum and essential.
3. The work entrusted has been done satisfactorily.
4. Necessary enquiries have been made and the work has been entrusted to the least offer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 1998 and others

Date of decision: This the 31st day of August 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sangliyine, Administrative Member

1. O.A.No.107/1998

Shri Subal Nath and 27 othersApplicants
By Advocates Mr J.L. Sarkar and Mr M. Chanda

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

....

2. O.A.No.112/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma and Mr S. Sarma

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

....

3. O.A.No.114/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma and Mr S. Sarma

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

....

4. O.A.No.118/1998

✓ Shri Bhuban Kalita and 4 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Ms N.D. Goswami.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

....

Attested
S. Deb Roy
A.C.L.

S. Deb Roy

5. O.A.No.120/1998

Shri Kamala Kanta Das and 6 othersApplicant
By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Ms N.D. Goswami.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

6. O.A.No.131/1998

All India Telecom Employees Union and
anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Patha, Addl. C.G.S.C.

7. O.A.No.135/98
All India Telecom Employees Union,
Line Staff and Group 'D' and
6 othersApplicants

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

8. O.A.No.136/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and
6 othersApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

9. O.A.No.141/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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10. O.A.No.142/1998

All India Telecom Employees Union,
Civil Wing Branch.Applicants
By Advocate Mr B. Malakar

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

11. O.A.No.145/1998

Shri Dhani Ram Deka and 10 othersApplicants
By Advocate Mr I. Hussain.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

12. O.A.No.192/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr U.K. Nair.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

13. O.A.No.223/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma and Mr S. Sarma.

-versus-

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

14. O.A.No.269/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and anotherApplicants
By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Nair and Mr D.K. Sharma.

-versus-

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

SK

15. O.A.No.293/1998

All India Telecom Employees Union,
Line Staff and Group 'D' and another Application
By Advocates Mr B.K. Sharma, Mr S. Sarma
and Mr D.K. Sarma.

-VERUS-

The Union of India and others Respondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R

BARUAH.J. (v.c.)

All the above applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the above applications by a common order.

2. The All India Telecom Employees Union is a recognised union of the Telecommunication Department. This union takes up the cause of the members of the said union. Some of the applications were submitted by the said union, namely, the Line Staff and Group 'D' employees and some other applications were filed by the casual employees individually. Those applications were filed as the casual employees engaged in the Telecommunication Department came to know that the services of the casual Mazdoors under the respondents were likely to be terminated with effect from 1.6.1998. The applicants, in these applications, pray that the respondents be directed not to implement the decision of terminating the services of the casual Mazdoors, but to grant them similar benefits as had been granted to the employees under the Department of Posts and to extend the

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*Adi
Jain*

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benefits of the Scheme, namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of 7.11.1989, to the casual Mazdoors concerned. Of the aforesaid O.A.s, however, in O.A.No.269/1998 there is no prayer against the order of termination. In O.A.No.141/1998, the prayer is against the cancellation of the temporary status earlier granted to the applicants having considered their length of service and they being fully covered by the Scheme. According to the applicants of this O.A. the cancellation was made without giving any notice to them in complete violation of the principles of natural justice and the rules holding the field.

3. The applicants state that the casual Mazdoors have been continuing in their service in different offices of the Department of Telecommunication under Assam Circle and N.E. Circle. The Government of India, Ministry of Communication, made a scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. This Scheme was communicated by letter No.269-10/89-STN dated 7.11.1989 and it came into operation with effect from 1.10.1989. Certain casual employees had been given the benefit under the said Scheme, such as, conferment of temporary status, wages and daily wages with reference to the minimum pay scale of regular Group 'D' employees including DA and HRA. Later on, by letter dated 17.12.1993 the Government of India clarified that the benefits of the Scheme should be confined to the casual employees who were engaged during the period from 31.3.1985 to 22.6.1988. However, in the Department of Posts, those casual labourers who were engaged as on 29.11.1989 were granted the benefit of temporary status on satisfying the eligibility criteria. The benefits were further extended

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to the casual labourers of the Department of Posts as on 10.9.1993 pursuant to the judgment of the Ernakulam Bench of the Tribunal passed on 13.3.1995 in O.A.No.750/1994. The present applicants claim that the benefit extended to the casual employees working under the Department of Posts are liable to be extended to the casual employees working in the Telecom Department in view of the fact that they are similarly situated. As nothing was done in their favour by the authority they approached this Tribunal by filing O.A.Nos.302 and 229 of 1996. This Tribunal by order dated 13.8.1997 directed the respondents to give similar benefits to the applicants in those two applications as was given to the casual labourers working in the Department of Posts. It may be mentioned here that some of the casual employees in the present O.A.s were applicants in O.A.Nos.302 and 229 of 1996. The applicants state that instead of complying with the direction given by this Tribunal, their services were terminated with effect from 1.6.1998 by oral order. According to the applicants such order was illegal and contrary to the rules. Situated thus, the applicants have approached this Tribunal by filing the present O.A.s.

4. At the time of admission of the application, this Tribunal passed interim orders. On the strength of the interim orders passed by this Tribunal some of the applicants are still working. However, there has been complaint from the applicants of some of the O.A.s that in spite of the interim orders those were not given effect to and the authority remained silent.

5. The contention of the respondents in all the above O.A.s is that the Association had no authority to

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represent the so called casual employees as the casual employees are not members of the Union Line Staff and Group 'D'. The casual employees not being regular Government servants are not eligible to become members or office bearers of the staff union. Further, the respondents have stated that the names of the casual employees furnished in the applications are not verifiable, because of the lack of particulars. The records, according to the respondents, reveal that some of the casual employees were never engaged by the Department. In fact, enquiries into their engagement as casual employees are in progress. The respondents justify the action to dispense with the services of the casual employees on the ground that they were engaged purely on temporary basis for special requirement of specific work. The respondents further state that the casual employees were to be disengaged when there was no further need for continuation of their services. Besides, the respondents also state that the present applicants in the O.A.s were engaged by persons having no authority and without following the formal procedure for appointment/engagement. According to the respondents such casual employees are not entitled to re-engagement or regularisation and they cannot get the benefit of the Scheme of 1989 as this Scheme was retrospective and not prospective. The Scheme is applicable only to the casual employees who were engaged before the Scheme came into effect. The respondents further state that the casual employees of the Telecommunication Department are not similarly placed as those of the Department of Posts. The respondents also state that they have approached the Hon'ble Gauhati High Court against the order of the

Tribunal dated 13.8.1997 passed in O.A.Nos.302 and 229 of 1996. The applicants does not dispute the fact that against the order of the Tribunal dated 13.8.1997 passed in O.A.Nos.302 and 229 of 1996 the respondents have filed writ applications before the Hon'ble Gauhati High Court. However, according to the applicants, no interim order has been passed against the order of the Tribunal.

6. We have heard Mr B.K.Sharma, Mr J.L. Sarkar, Mr I. Hussain and Mr B. Malinkar, learned counsel appearing on behalf of the applicants and also Mr A. Deb Roy, learned Sr. C.G.B.C. and Mr N.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents. The learned counsel for the applicants dispute the claim of the respondents that the Scheme was retrospective and not prospective and they also submit that it was upto 1989 and then extended upto 1993 and thereafter by subsequent circulars. According to the learned counsel for the applicants the Scheme is also applicable to the present applicants. The learned counsel for the applicants further submit that they have documents to show in that connection. The learned counsel for the applicants also submit that the respondents cannot put any cut off date for implementation of the Scheme, inasmuch as the Apex Court has not given any such cut off date and had issued direction for conferment of temporary status and subsequent regularisation to those casual workers who have completed 240 days of service in a year.

7. On hearing the learned counsel for the parties we feel that the applications require further examination regarding the factual position. Due to the paucity of material it is not possible for this Tribunal to come to a

definite conclusion. We, therefore, feel that the matter should be re-examined by the respondents themselves taking into consideration, of the submissions of the learned counsel for the applicants.

8. In view of the above we dispose of these applications with direction to the respondents to examine the case of each applicant. The applicants may file representations individually within a period of one month from the date of receipt of the order and, if such representations are filed individually, the respondents shall scrutinize and examine each case in consultation with the records and thereafter pass a reasoned order on merits of each case within a period of six months thereafter. The interim order passed in any of the cases shall remain in force till the disposal of the representations.

9. No order as to costs.

SD/- VICE-CHAIRMAN
SD/- MEMBER (A)

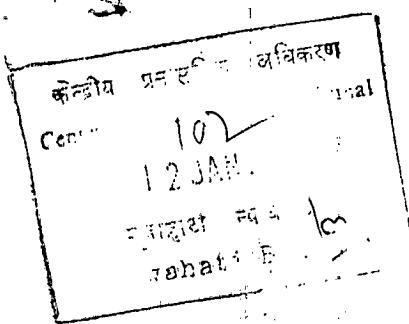
certified to be true (Cp)

Wifira Guha

Deputy Registrar (D)
Central Administrative Tribunal
Guwahati Bench

11/10/55

Attested
D. D. D.
Advocate



47-

58
File No. 1452
Recd. 14/1/2000
Advt. 1452

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

O/A NO. 140/2000.

Shri Prabir Kr. Banerjee,

... Applicant.

VS -

Union of India and Others,

... Respondents.

(Written statements filed by the Respondents
No. 1, 3 and 4).

The written statements of the aforesaid
respondents are as follows :-

1. That a copy of the O/A No. 140/2000
(hereinafter referred to as " application ")
has been served on the respondents. The respondents
have gone through the said application and understood
the contents thereof. The interest of all the
respondents have common and similar, common written
statements are filed by all of them.

2. That with regard to the statements made in
paragraph 1 of the application, the answering

respondents beg to state that the applicants are not covered by the definition of " casual labourer " and hence they cannot come within the zone of consideration under the scheme of 1989. In view of the above facts and circumstances, they cannot be considered for confirmation of temporary status or for regularisation under the said scheme and against for such vacancy created for the casual labourer. The respondents, therefore denied the correctness of the said statements made in paragraph 1 of the application.

3. That with regard to the statements made in paragraph 2, 3, 4.1 and 4.2 of the application, the answering respondents have no comments to offer.

4. That with regard to the statements made in paragraph 4.3 of the application, the respondents state that the applicants were engaged for operation of the " Package Type A/C plants " on a mutually agreed monthly consolidated amounts of Rs. 6000/- only for four of them as per verbal terms and conditions of the contract. The said verbal contract came into force w.e.f. 16.7.1993 and came to an end on 31.7.1998 followed by a written contract with M/S Sudarsana Cooling firm after observing all departmental formalities. The applicants got the

lump sum amount of Rs. 6000/- (not total) which was enhanced to Rs. 6600/- on humanitarian ground as per their request. Accordingly they approximately received Rs. 1700/- per month at the maximum and they accepted the same without any complaint in comparison to their monthly amount. The monthly rate of casual labourers approved by the Govt. of India at that time was Rs. 2025/- for 30 days and Rs. 2093/- for 31 days whereas the applicants got only Rs. 1700/- out of the total consolidated contracted amount of Rs. 6000/6600 per month. From the above facts, it now clear that the applicants were contract labourers and was not casual labourers for such any intend or purpose. So far as the question of certificate referred to by the applicants, such certificate leveiled the effect that they were engaged for operation of the Package Type A/C Plants, although the standard format of payment in ACG - 17 was used for their payment. They were never paid for daily wage basis rather the payment was made on lump sum monthly contract basis out of the total monthly consolidated contract amount. Therefore, the applicants contention that they were engaged on daily wage basis is not correct and hereby denied.

5. That with regard to the statements made in paragraph 4.4 of the application, the answering

respondents denied the correctness of those statements. Neither the applicant's wages were fixed at the Govt. prescribed rate nor on daily wages basis on the same terms and conditions applicable to other casual mazdoors at any period. Further it is also not correct that the applicants were forced to work on contract basis with w.e.f. September, 1996. The engagement of the applicants as contract labourers for a job was discontinued w.e.f. July, 1998 last and the job was offered to private firm M/S Sudarshana Cooling Firm after observing the departmental formalities. Since then there is no existence of the applicants in the department. Hence as mentioned in the para the respondents had reacted such illegal action which forced the applicants to work on contract basis because of filling of case at the Hon'ble CAT against the said contract engagement was all verbal and they were informed the nature of duty and fixed amount of monthly payment. Being on contract engagement the applicants accepted Rs. 1500/-, Rs. 1600/- and Rs. 1700/- etc. per month during their period of engagement without any objection while departmental approved casual labourers rate was Rs. 67.50 (increased time to time with increase of Dearness Allowance) amounting to Rs. 2025/- for 30 days and Rs. 2093/- for 31 days or more.

6. That with regard to the statements made in paragraph 4.5 of the application, the answering respondents state that as per prevailing procedure fund required either for maintenance head, Capital head or O/E head are required by the Sub-Divisional Officers were sanctioned by the Telecom District Manager. The fixed amount of fund Rs. 6600/- per month regularly was sanctioned by the competent authority to meet up the expenditure for the operation of A/C Plant on contract basis as fixed to applicants on verbal negotiation and paid to them through some vouchers.

It is not a hidden fact that the work of Operational A/C equipment is of regular nature. By engaging the applicants on contract basis the whole system of the A/C operation was kept under the direct control of the Department. The interest of the Department was to see that its A/C packages runs satisfactorily round the clock. Offering of the operational contract to any private party/Firm means handing over the direct responsibilities of A/C Operational system to the party/Firm under administrative control of the Department. The later was not effected and the same was only mentioned in the letter No. E-24/5 dated 5.6.1998. This is the true meaning of the letter. It is re-asserted here again that the applicants were never engaged on daily wages basis

but their engagement was on contract basis. The applicants were engaged on a lump sum amount (for 4 persons) which was much less than that of casual mazdoor engaged on departmental rate.

7. That with regard to the statements made in paragraph 4.6 of the application, the answering respondents state that these are all matter of records. However, the respondents state that the order in O/A No. 112/98 was passed in a series of case and under the said judgement and order, the entire matter left for the department/respondents for proper verification/scrutiny to find out the illegality of casual labourers and to regularise them and order confer temporary status on them. On scrutiny and verification, however, it was found that the applicants, contract labourers not casual labourers and therefore they could not come within the zone of consideration.

8. That with regard to the statements made in paragraph 4.7, 4.8 and 4.9 of the application, it is however stated that the scheme is meant for casual labourers only and the applicants being contractual labourers and they ~~could~~ not come within the zone of consideration.

9. That with regard to the statements made in paragraph 4.10 of the application, the answering respondents state that the revised pay w.e.f. 1.1.95 was denied as the applicants were not working as casual labourers as per departmental rate meant for casual labourers. Rather they were working on contractual basis with a lump sum monthly amount. Hence, the claim of the respondents are hereby denied.

10. That with regard to the statements made in paragraph 5.1 to 5.8 of the application, the respondents stated that the grounds shown by the applicants are no grounds in the eye of law and was mis-concept and mis-interpreted or terms of engagement. Hence, the grounds are not legally valid grounds and the applicants is liable to be dismissed being devoid of any merit.

11. That with regard to the statements made in paragraph 6 and 7 of the application, the answering respondents have no comments to make.

12. That with regard to the statements made in paragraph 8.1 to 8.4 and 9 of the application, the answering respondents state that in view of

- 3 -

the above facts and circumstances and the provision of law, the applicants are not entitle to any relief under the scheme of 1989 or under the decision/contraction given by the Hon'ble Tribunal regarding the matter of casual labourers and therefore the application is liable to be dismissed with cost.

In the premises aforesaid,
it is therefore prayed that
Your Lordships would be
pleased to hear the parties,
peruse the records and after
hearing the parties and
perusing the records, shall
further be pleased to dismiss
the application with cost
and/or pass such order that
Your Lordships may deem
fit and proper.

Verification...9.

VERIFICATION

I, Shri Ganesh Chandra Sarma
presently working as Asst. Director Telecom (Legal)
being competent and duly authorised to sign this
verification, do hereby solemnly affirm and state
the statements made paragraph 1 to 12
are true to my knowledge and belief. those made
in paragraph _____ being matter
of records are true to my information derived
therefrom and the rest are my humble submission
before this Hon'ble Tribunal. I have not suppressed/
concealed any materials/informations from this
Hon'ble Tribunal.

And I sign this verification on this 11th
day of ^{January} December, 2000 at Guwahati.

Ganesh Ch. Sarma.
Deponent.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 140 of 2000.

Date of Order : This is the 27th Day of July, 2001.

HON'BLE MR. JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER.

1. Shri Prabir Kumar Banerjee
S/o Shri Anil Kumar Banerjee
A/C Operator (Casual Labour)
New Telephone Exchange
Nagaon, Assam.
2. Shri Sibu Sankar Kunda
S/o of late Sailendra Narayan Kundu
A/C Operator (Casual Labour)
New Telephone Exchange
Nagaon, Assam.
3. Shri Sambhu Chakraborty
S/o Sri Manmath Chakraborty
A/C Operator (Casual Labour)
New Telephone Exchange
Nagaon, Assam.

... Applicants.

By Advocate Mr. M. Chanda

- Vs -

1. Union of India
Ministry of Communication
Department of Telecom, New Delhi
(represented by the Secretary
Telecom Commission), New Delhi.
2. The Chief General Manager Telecom
Assam Telecom Circle
Ulubari, Guwahati.
3. The Telecom District Manager
Nagaon Telecom District
Nagaon, Assam.
4. The Sub-Divisional Engineer (Cons.)
Nagaon Sub-Division
Nagaon, Assam.

... Respondents.

By Mr. A. Deb Roy, learned Sr.C.G.S.C.

ORDER

CHOWDHURY J. (V.C.) :

This is an application under section 19 of the
Administrative Tribunals Act, 1985 seeking for a direction

contd.. 2

Attested
Sri
Advocate

on the respondents for conferring temporary status as Casual Mazdoor to these three applicants in terms of the Scheme initiated by the respondents.

2. All the three applicants claimed to have worked as Casual Mazdoors engaged by the Nagaon Telephone Exchange, Nagaon. It was asserted in the application that the applicant no.1 & 3 Shri Prabir Kumar Banerjee and Shri Sambhu Chakraborty were engaged as Casual Workers under the SDE(Phones), Nagaon Telephone Exchange on daily wages basis on and from 16.7.1993 and Shri Sibu Sankar Kundu, applicant no.2 on and from 1.9.1993. It was stated that though they were engaged as Casual Workers, they were entrusted with the job of Air Conditioner Operators and they were paid daily wages in terms of the prescribed rate for the Casual Workers. The applicants relied upon the communication dated 14.7.1997, issued by the SDE (Construction), Nagaon, which was annexed to the Application in Annexure 1 Series No. 1.

3. The applicants also annexed with the application some certificates issued by the SDE and JTO. The respondents in their written statement, on the other hand, contended that these four persons, mentioned in the aforementioned document dated 14.7.1997 including the applicant though shown as Casual Workers, were in fact Contract Labourers. According to the respondents, on the strength of verbal contract the applicants worked from 16.7.1993 to 31.7.1998 followed by a written contract with M/s Sudarsana Cooling Firm after observing all departmental formalities. The respondents did not dispute the contents of the communication sent by the SDE for granting temporary status.

4. On considerations of the materials on records it is difficult to accept that the applicants were engaged

as Contract Labourers and as not Casual Labourers. The document dated 14.7.1997 clearly indicated that the applicants were allowed to discharge duties as Casual Labourers. In the absence of any other materials it is difficult to accept the contentions of the respondents.

5. We therefore ^{hold} observe that the applicants are also entitled for consideration of absorption in terms of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 of Telecom Department. Needless to state that Casual Labourers recruited after 29.11.1989 and upto 1.9.1993 are also entitled to confer temporary status in view of the communication to this extent.

6. We have heard Mr.M.Chanda, learned counsel for the applicants and Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents. Upon hearing the learned counsel for the parties and upon considering all the materials on record, we have reached the following findings.

7. The respondents are directed to consider the case of the persons who were engaged as Casual Labourers. Accordingly, we direct the respondents to consider the case of the applicants to grant temporary status within three months from the date of receipt of the copy of the order.

With this, the application is allowed.

There shall, however, be no order as to costs.

TRUE COPY

Signature

Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

Attested
Dr
Advocate

10/8/2011
10/8/2011

BHARAT SANCHAR NIGAM LIMITED
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON ASSAM

No.E-182/CAT/Pt-II/ 72

Dated at Nagaon the 15-02-2002

To,
Sri Prabir Kumar Banerjee
Nagaon,

SPEAKING ORDER

In pursuance of the Hon'ble CAT Guwahati O.A. No.140/2000, your case was scrutinised by the undersigned and it was revealed that as per the guidelines issued by the BSNL HQ letter No.272-2/01-Pers IV dated 28-09-2001, in order to be eligible for conferment of temporary status a casual worker must fulfil some eligibility criteria, the most crucial of these the first one is the casual worker must be in service as on 01-08-1998 and the second one is that he must complete 240 days in a year during the engagement period.

So, it is clear that since your engagement came to termination by 10-07-1998 due to a fresh contract that the department entered into with M/S Sudarshana Cooling Firm Nagaon w.e.f 01-08-1998 and thus you have failed to fulfil the first criterion.

Moreover, you were not allotted any fixed duty (i.e eight hours per day) as per verbal contract and the payment made to you was a lump sum amount of Rs 1500/- per month as fixed during initial negotiation of the contract upto 31-12-1995 and enhanced to Rs.1650/- per month since 01-01-1996 to 31-12-1998 but not on the prevailing departmental rate that a normal daily Rated Mazdoor had been drawing (i.e.Rs.2025/- & Rs.2093/- per month for 30 days & 31 days respectively).

As such your claim for grant of temporary status could not be conceded to.

28/2/2002
Telecom District Manager
Nagaon Telecom District.

*Attested
Sri
Adv.*

BHARAT SANCHAR NIGAM LIMITED
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON ASSAM

No.E-182/CAT/Pt-II/ 75

Dated at Nagaon the 15-02-2002

To,

Sri Sibu Sankar Kundu
Nagaon,

SPEAKING ORDER

In pursuance of the Hon'ble CAT Guwahati O.A. No.140/2000, your case was scrutinised by the undersigned and it was revealed that as per the guidelines issued by the BSNL HQ letter No.272-2/01-Pers IV dated 28-09-2001, in order to be eligible for conferment of temporary status a casual worker must fulfil some eligibility criteria, the most crucial of these the first one is the casual worker must be in service as on 01-08-1998 and the second one is that he must complete 240 days in a year during the engagement period.

So, it is clear that since your engagement came to termination by 20-07-1998 due to a fresh contract that the department entered into with M/S Sudarshana Cooling Firm Nagaon w.e.f 01-08-1998 and thus you have failed to fulfil the first criterion.

Moreover, you were not allotted any fixed duty (i.e eight hours per day) as per verbal contract and the payment made to you was a lump sum amount of Rs 1500/- per month as fixed during initial negotiation of the contract upto 31-12-1995 and enhanced to Rs.1650/- per month since 01-01-1996 to 31-12-1998 but not on the prevailing departmental rate that a normal daily Rated Mazdoor had been drawing (i.e.Rs.2025/- & Rs.2093/- per month for 30 days & 31 days respectively) .

As such your claim for grant of temporary status could not be conceded to.

1.8.98

15-02-2002
Telecom District Manager
Nagaon Telecom District.

Attested
S. M. Adhv.

BIHAR SANCHAR UTGAM LIMITED
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON ASSAM

No.E-182/CAT/Pt-II/ 73

Dated at Nagaon the 15-02-2002

To,

Sri Sambhu Chakraborty
Nagaon,

SPEAKING ORDER

In pursuance of the Hon'ble CAT Guwahati O.A. No.140/2000, your case was scrutinised by the undersigned and it was revealed that as per the guidelines issued by the BSNL HQ letter No.272-2/01-Pers IV dated 28-09-2001, in order to be eligible for conferment of temporary status a casual worker must fulfil some eligibility criteria, the most crucial of these the first one is the casual worker must be in service as on 01-08-1998 and the second one is that he must complete 240 days in a year during the engagement period.

So, it is clear that since your engagement came to termination by 20-07-1998 due to a fresh contract that the department entered into with M/S Sudarshana Cooling Firm Nagaon w.e.f 01-08-1998 and thus you have failed to fulfil the first criterion.

Moreover, you were not allotted any fixed duty (i.e eight hours perday) as per verbal contract and the payment made to you was a lump sum amount of Rs 1500/- per month as fixed during initial negotiation of the contract upto 31-12-1995 and enhanced to Rs.1650/- per month since 01-01-1996 to 31-12-1998 but not on the prevailing departmental rate that a normal daily Rated Mazdoor had been drawing (i.e.Rs.2025/- & Rs.2093/- per month for 30 days & 31 days respectively) .

As such your claim for grant of temporary status could not be conceded to.

8/2/2002
Telecom District Manager
Nagaon Telecom District.

Attestant

S. Dhr.
Asr.

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT MANAGER
NAGAON 782001

No. ML-3000/OP/98-99/83

dated at Nagaon The 22nd Sept'98

To

~~Sri Sibu Kundu~~

M/S Sudarshna Cooling Centre & Electricals
R.K. Road, Nagaon (Assam),
Pin-782001.

Subject : Round the clock operational Contract for all days in a week of 2X7.5 TR
Package Type A/C Plant at Telephone Exchange, Nagaon.

Reference : Your offer No. Nil dated 24-8-98.

Dear Sir,

Your above refered offer for the round the clock operation on all days in a week of 2X7.5 TR Package Type A/C Plant at Telephone Exchange, Nagaon at Rs.8000/- (Rupees Eight thousand)only P.M. is hereby accepted for a period of one year w.e.f. 1.9.98 as per terms and conditions given below :-

TERMS AND CONDITIONS.

- 1) You will be responsible for manning and operation of the package type A/C Plant for Telephone Exchange Building at Nagaon round the clock on all days in a week.
- 2) The Plant should be operated as per maintenance manual. The relevant log sheet/log book for the A/C Plant will be maintained by you and same should be submitted every week to the SDE(Construction)/Nagaon or any other to whom the SDE(Cons) enmarked for the purpose for checking the record.
- 3) The operation of A/C Plant cover all recommended routine daily/weekly/monthly/half yearly/annually operation if any as per operation manual.
- 4) All labour charges for operation are included in the contract.
- 5) You are also responsible to maintain a room temperature of 20-1-20° and relative humidity 40 to 60% in all conditions in the Exchange room and shall be confirmed by the SDE(Construction) on the bills claimed by you. For this purpose necessary copies of log entries attested by the SDE(Cons), Nagaon should be forwarded to the TDM, Nagaon.
- 6) No rate enhancement of any type will be permissible during the currency of the contract ie. one year (W.e.f. 1.9.98 to 31.8.99).
- 7) Period of contract for 12 (twelve) months. This contract is valid for the period of one year from the date 01.09.98 to 31.08.99.

INSPECTION

The CGMT of Assam Telecom Circle, Guwahati or any of his representative may inspect the operation of the Plant at any time without giving any prior intimation.

PENALTY

As the said equipment is under operation with you, you will be liable to a suitable penalty if there is any damage and theft of the said equipment during the terms of the contract. Undue shut down of the Plant due to your faulty workmanship or

mishandling etc. are may be decided by the SDE(Cons). Nagaon mutual basis will cause deduction from your proforma bill.

The decision of the SDE(Cons). Nagaon for such deduction will be final and conclusive.

TERMS OF PAYMENT

The payment for the ongoing month will be made within one month of succeeding month positively by Accounts Payee cheque payable to M/S Sudarshna Cooling Center & Electricals against the prereceipted invoice on satisfactory completion of work in the month. The proforma invoice bills in duplicate are to be rooted through SDE(Cons). Nagaon within 5 days of completion of succeeding month.

You may indicate the names and address of the technicians and other representatives for issue of gate pass for security purpose.

The receipt of the order may please be acknowledged and acceptance letter may be sent.

Thanking you.

Yours faithfully

CP : L. N. S
Telecom District Manager
Nagaon Telecom District
Nagaon-782001

Copy for information to :

- (1) The CGMT/Assam Circle, Ullubari, Guwahati-7.
- (2) The SDE(Construction). Nagaon.
- (3) The Accounts Officer, O/O the TDM/Nagaon.

Telecom District Manager
Nagaon Telecom District
Nagaon-782001

Annexure-8

-64-

(35)

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE TELECOM DISTRICT ENGINEER:NAGAON
NAGAON-782001

No:ACE-2/Accounts/96-97/12

Dated at Nagaon the 16.12.96

To,

The S.D.O.T./Nagaon/Diphu/Itaijai.

The SDE(P)/Nagaon/Morigaon/Launding.

The SDE(Plg)/SDE(TP)/SDE(HRD)/FTO(Cpm)

It is for the information of all concerned that the rate of wages to be paid to the daily labourers should not be more than Rs.51/- henceforth. Suitable instructions may be given to the subordinate also.

(P.K.Abbikari)

Telecom District Engineer
Nagaon Telecom District
Nagaon-782001.

W. V. P. / P. D. C. M. S. D. P. M. / 94.12.96 / 8. 12. 1996.

Payments of Daily wages to TSMs. A/c Operators

DRM (Comp. ground) - for the m/o Jan'97 SDE(P)/NGO Section

SL No.	Name and Designation	No. of days working	Rate	Payable amount	Nature of work performed	Signature of Payer
1.	Sri. Kushal Baikia. (TSM)	31	Rs. 79.85	Rs. 2475/-	Office work of SDE(P) INQS Office	Kushal Baikia
2.	" Jinesh Das. (TSM)	31	Rs. 79.85	Rs. 2475/-	General office work of IIT-2048, 14 KG-DOT and TAX work	Unnati Das
3.	" Hemakanta Maitra. (TSM)	31	Rs. 79.85	Rs. 2475/-	Undergoing P/M training	Hemanta Maitra
4.	" Prabir K. Banerjee. (A/c OPR)	31	On contract basis	Rs. 1650/-	Operating A/c plant	Prabir K. Banerjee
5.	" Shambu Chakraborty (A/c OPR)	31	As per	Rs. 1650/-	— Do —	Shambu Chakraborty
6.	" Sibu Shankar Kundu. (A/c OPR)	31	— Do —	Rs. 1650/-	— Do —	Sibu Shankar
7.	" Rajen Rajkhowa. (A/c OPR)	8	— Do —	Rs. 1650/-	— Do —	Rajen Rajkhowa
8.	" S. Mukherjee. (DRM)	22	Rs. 79.85/-	Rs. 597.70/-	Classical duty in the office of SDE(P) m/o SDE	S. Mukherjee

Amount in Indian Rupees 215 hundred ninety only.

66-
Infographic of A/C operator. Annexure
W.E.f. 20.6.96 (C.S.E.W.)
X-1

L.N.	Name.	30/6	1-7	2-7	3-7	4-7	5-7	6-7
1	Bin R. Rajkhan	2100- 0500	2100- 0500	2100-000 0000-050	21-00 00-05	21-00 00-05	21-00 00-05	21-00 00-05
2	S. Chakraborty	05-23	09-17	13-21	05-13	09-17	13-21	05-1300
3	P. Manoj	09-17	13-21	05-13	13-21	05-13	09-17	09-17
4	" S. Kundee	13-21	05-13	09-17	09-17	13-21	05-13	132100

*- Deputed- 30/6 s. kundee mutual with s. chakraborty

MS:
9296/96
19.6.1996

Duty chart of the A/C operators
Nagaon telephone exchange.

SL NO	Name	29/3	30/3	31/3	1/4	2/4	3/4	4/4	
1	R. Raykhow (D.R.M)	N	N	N	N	N	N	N	E
2	P. Debnarjee (D.R.M)	M	D	E	M	D	E	M	N
3	S. Chakraborty (D.R.M)	D	E	M	E	M	D	D	M
4	S. K. Kundu (D.R.M)	E	M	D	D	E	M	E	D

N.B:

H = 21-05 22-06
M = 05-13 06-14
D = 06-17 10-18
E = 13-21 14-22

X

AM

AM 28/3/98
Chief Technical Supervisor
I.T. Exchange
Nagaon

-68-
DUTY CHART OF THE A/C OPERATOR.

I.L.T. & C. DOT EXCHANGE NGG.

SL No	Name	SUN	MON	TUE	WED	THU	FRI	SAT	Remarks
		28/6	29/6	30/6	01/7	02/7	03/7	04/7	
1	SE P. Benajee D.R.M.	06-12 22-00	N	N	N	N	N	N	
2	" S. Chakraborty D.R.M.	B	A	-	-	-	-	-	
3	" S. Kundu D.R.M.	D	B	-	-	-	-	-	
4	" R. Raykhowa D.R.M.	00 08	D	-	-	-	-	-	

N = 22-00
00-06

A = 06-14

B = 10-18

D = 14-22

(A)
27/6/98
Chief Technical Supervisor
I.L.T. Exchange
Nagaon

X8

DUTY CHART OF THE A/C OPERATOR.

I.L.T & C-DOT EXCHANGE, NAGAON.

SL NO	NAME	SUN	MON	TUE	WED	THU	FRI	SAT
		21/6	22/6	23/6	24/6	25/6	26/6	27/6
1	SRI R. RAJKHONA (D.R.M)	08-12 22-00	N	N	N	N	N	N
2.	S. BANERJEE (D.R.M)	B.	2.	-	-	-	-	-
3.	S. CHAKRABORTY (D.R.M)	D.	B.	-	-	-	-	-
4.	S.S. KUNDU (D.R.M)	00 08	D.	-	-	-	-	-

N = 22-00
00-06.

2 = 08-14.

B = 10-18.

D = 14-22.

26/6/98
Chief Technical Supervisor
I.L.T. Exchange
Nagaon

Department of Telecommunications
Office of the Chief General Manager, Assam Telecom Circle,
Ulubari, Guwahati - 781 001

No. ESTT-9/12/

Dated the 27th Aug., 1998

To

1. Sri J. D. Yadav, GM, Kamrup Telecom. Dist., Guwahati.
2. Sri S. S. Ghosh, TDM, Bongaigaon.
3. Sri B. K. Goswami, TDM, Tezpur.
4. Sri B. N. Singh, TDM, Dibrugarh.
5. Sri K. Mani, TDM, Jorhat.
6. Sri S. Rajhans, TDM, Nagaon.
7. Sri S. K. Samanta, TDM, Silchar.

Sub:-

Case for grant of Temporary Status of the Casual Mazdoors
(full time) working the SSAs.

Kindly submit the information regarding the number of casual labourers working, not yet conferred Temporary Status, for a period of more than 240 days in your SSA as per authenticated records in the enclosed proforma. The detail particulars of such casual labourers may also be furnished as indicated below:-

1. Name of Casual Labourer
2. Father's Name
3. Educational Qualification
4. Date of Engagement
5. Whether working in the job of regular nature or casual/ seasonal nature
6. Date of sponsorship
7. Official/officer who engaged the casual labourer
8. Particulars of service rendered since engagement
Year
Total no. of days worked

You are also requested to furnish a certificate signed by IFA and Head of the SSA to the extent that it has been verified/checked from the authenticated records for the enlisted casual labourers for the period they worked in the Department.

The information must be submitted latest by 9.9.98.

C. S. D. N.
(R. S. Tripathi)
By G. M. (Addm), Guwahati-7

Case for grant of Temporary Status at the Casual—
Station - (Interim) working month, SDEC/CIGS.

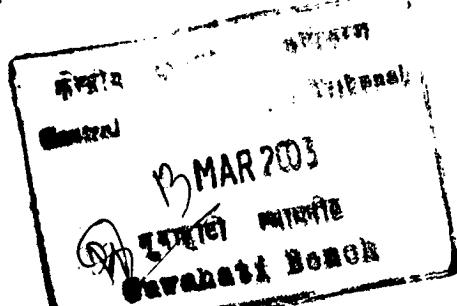
SL No.	Name of Casual Labourer	Father's Name qualifi- cation	Educational qualifi- cation	Ex. of nature	Ex. of employment	Sponsor- ship.	Official/Officer who engaged the Casual- labourer.	Particulars of service rendered since engagement	Total nos. of days Work (Year wise)						Up to June'95.								
									(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1.	Sri. Prabir K. - Benerjee.	Avil K. Benerjee.	B.A.	16-7-93 Moderate.	Regular	1986.	J.T.O(I/D) 8 E.E. 120. 291/86.		169	365	365	366	365	181									
2.	Shambhu Chakraborty	Manmath K. Chakraborty	Class VIII	16-7-93 Moderate.	Regular	1995.	E.E. 120. 1421/95.	- DO —	169	365	365	366	365	181.									
3.	Rajen Rajkhowa	Deben Rajkhowa	H.S.L.C	1-10-93 nature.	Regular	1982.	E.E. 120. 108/82.	— do —	92	365	365	366	233	181.									
4.	Situ Borker Kundu	Late Sailendra Kundu.	H.S.S.L.C	1-9-93 nature.	Regular	1992.	E.E. 120. 1085/92.	— do —	122	365	365	366	365	181.									

Remarks

The above Casual Mazdoor were engaged for operating Fly Type A/C Plant of ILT-2048 exchange/repair as per verbal approval of the then AMT/DR and TDE/VGS due to abolition of operational contract of A/C Plant with 'Blue Star' Company to minimise the expenditure (Operational) from Rs. 1,92,000/- to Rs. 32,000/-.

The engagement was purely on contract basis with monthly fixed expenditure and discontinued the same w.e.f. July'98.

SC. E-63/75. dtd 14-3-98. Forwarded to the TDM/VGS for favor of intimation and r/c.
 with ref. to E-162/Part time/casual Mazdoor/s dtd 31-8-98.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

82
Union of India & Ors - Respondents
through J.
Any Senior Counsel
13/3/03

In the matter of :-

O.A. No. 105 of 2002

P.K. Banerjee & Ors. ... Applicant

- Versus -

Union of India & others

... Respondents

Written statements for and on behalf of Respondents
Nos. 1, 2, 3, 4, 5 and 6.

I, S.C. Das, Asstt. Director Telecom (Legal), Office of
the Chief General Manager, Assam Circle, Guwahati do hereby
solemnly affirm and say as follows :-

- 1) That I am the Assistant Director Telecom (Legal), Office of the Chief General Manager, Assam Circle, Guwahati and as such acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement, the other contentions and statements may be deemed to have been denied and the applicants should be put to strict proof of whatever they claim to the contrary. I am authorised and competent to file this written statement on behalf of all the Respondents.
- 2) That with regard to the statements made in paragraph 1 of the application, the respondents beg to state that the orders were always properly issued and the same were Just.
- 3) That the respondents beg to state have no comments to the statements made in paragraph 2, 3, 4.1 and 4.2 of the application.
- 4) That with regard to the statements made in paragraph 4.3 of the application, the respondents beg to state that the applicants do not fall into the category of casual workers will be clear from the following points.

(2)

Some of the general terms and conditions for employment of casual labourer are cited below with a view to justify the applicants whether they are casual workers or contract workers.

- i) Persons on daily wages should not be recruited for works of regular nature.
- ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts can not be created.
- iii) The casual workers may be given one paid weekly off after six days continuous work
- iv) Where nature of work entrusted to the casual workers are the regular employees is the same, the casual workers may be paid at the rate of 130th of the pay at the minimum of the relevant pay scale plus dearness allowance for works of 8 hours a day.
- v) The payments to the casual workers may restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned above.

They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.

From the above cited guide lines issued by the Central Government in the matter of recruitment of casual workers on daily wages it is crystal clear that the applicants have very miserably failed to satisfy the eligibility criteria so far the

- / I) wages paid to them
- / II) post against which they had been working
- / III) continuous work without a weekly off are concerned.

The post against which they had been working is was of regular nature and that could be manned only by regular workers in absence of which by workers on contract basis only and not any casual workers at any cost.

There was not provision of weekly off, since as per terms and conditions of verbal contract, the applicants undertook to work without any weekly off.

The payment was on lump sum basis without any formula. They were not in work as casual worker as on 1-8-98. Vide Annexure No.1 where in the total Nos. of days works duty performed by the

applicants have been shown by the engaging unit officers and the same have been accepted and claimed to have been performed by the applicants too.

It unambiguously proves that the applicants had been performing their duties without a break for a single day that means without any weekly OFF (break day)

This is contrary to the established rules framed by the Govt. of India. As such it has never permitted any authority to engage any workers right from the casual workers to regular workers without giving any weekly OFF, that is after every 48 hours of works duty there must be a break OFF day of 8 hours to enable the worker to be ready for the next week duty WEEKLY OFF is must for all categories of workers engaged under the Govt. of India.

- 5) That the respondents beg to state that the applicants are contract workers and are not casual employees of the Deptt.
- 6) That the respondents have Annex herewith a copy of the Affidavit sworn by Sri Jagendra Nath Saikia, Sub-Divisional Engineer(Internalkamak / construction) in the Office of the Telecom District Manager, B.S.N.L., Nagaon to the effect that the applicants were working as package Type A/C operators in the Nagaon Exchange.
- 7) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, S.C. Das, Assistant Director Telecom(Legal), Office of the Chief General Manager, Assam Circle, Guwahati being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 & 2 of the application are true to my knowledge and belief, those made in paragraphs 3-6 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

AND I sign this Verification on this the 4th day of March, 2003 at

S.C. Das
(S. C. Das)
DEPONENT Telecom (Legal)
The Chief General Manager Telecom
Assam Circle, Guwahati - 7
Assam Circle, Guwahati - 7

certifying that Sri Jayaprakash Kumar-Bandyopadhyay is
an official of ILT-2048 Exchange
in Nagaon Corporation till when he is in NCC-17, since 1993 on per-
manent basis.

Details below :
1st year : 16th July, 1993 to 31st December, 1993, 169 days

2nd year : 2 Month Working days.

(1)	1993	July	16	31
(2)	"	August	31	31
(3)	"	September	30	31
(4)	"	October	31	31
(5)	"	November	30	31
(6)	"	December	31	Total : 169 days

(7)	1994	January	31	Total : 169 days
(8)	"	February	28	31
(9)	"	March	31	31
(10)	"	April	30	31
(11)	"	May	31	31
(12)	"	June	30	31
(13)	"	July	31	31
(14)	"	August	31	31
(15)	"	September	30	31
(16)	"	October	31	31
(17)	"	November	30	31
(18)	"	December	31	Total : 169 days

(1)	1995	January	31	Total : 365 days
(19)	"	February	28	31
(20)	"	March	31	31
(21)	"	April	30	31
(22)	"	May	31	31
(23)	"	June	30	31
(24)	"	July	31	31
(25)	"	August	31	31
(26)	"	September	30	31
(27)	"	October	31	31
(28)	"	November	30	31
(29)	"	December	31	Total : 365 days

(31)	1996	January	31	Total : 365 days
(32)	"	February	29	31

Total : 60 Days

5.17.8. (Phoned)
Nagaon

J. T. O. I/D

ILT-2048 Exch.

Nagaon

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(b)

Certified that Sri Sambhu Chakraborty
 son of Sri Manmatha Chakraborty is working in ILT-2048 Exchange
 as A/C Operator on daily wage basis by ACG-17, since 1993 as
 per details below: Sri Sambhu Chakraborty is working in ILT-2048 Exchange
 as A/C Operator on daily wage basis by ACG-17, since 1993 as

Sl.no	Year	Month	Working days
(1)	1993	July	16
(2)	"	August	31
(3)	"	September	30
(4)	"	October	31
(5)	"	November	30
(6)	"	December	31

Total : 169 days

(7)	1994	January	31
(8)	"	February	28
(9)	"	March	31
(10)	"	April	30
(11)	"	May	31
(12)	"	June	30
(13)	"	July	31
(14)	"	August	31
(15)	"	September	30
(16)	"	October	31
(17)	"	November	30
(18)	"	December	31

Total : 365 days

(19)	1995	January	31
(20)	"	February	28
(21)	"	March	31
(22)	"	April	30
(23)	"	May	31
(24)	"	June	30
(25)	"	July	31
(26)	"	August	31
(27)	"	September	30
(28)	"	October	31
(29)	"	November	30
(30)	"	December	31

Total : 365 days

(31)	1996	January	31
(32)	"	February	29

Total : 60 days

S. D. B. (Phones)
 No. 782(XI)
 O. T. 2048

J. T. O. I/D
 ILT-2048 Exch
 Nagpur
 MH

- 22 -

Certified that Sri Sibu Banke Kundu son of
 Late. Vallendra Narayan Kundu, is working in ILT-2040 Exchange
 as A/C Operator on daily basis wage basis by ACA-17 since 1993
 and per details below:

Sl. no	Year	Month	Working Days	
(1)	1993	September	30	
(2)	"	October	31	
(3)	"	November	30	
(4)	"	December	31	
				Total : 122 days
(5)	1994	January	31	
(6)	"	February	20	
(7)	"	March	31	
(8)	"	April	30	
(9)	"	May	31	
(10)	"	June	30	
(11)	"	July	31	
(12)	"	August	31	
(13)	"	September	30	
(14)	"	October	31	
(15)	"	November	30	
(16)	"	December	31	
				Total : 365 days
(17)	1995	January	31	
(18)	"	February	20	
(19)	"	March	31	
(20)	"	April	30	
(21)	"	May	31	
(22)	"	June	30	
(23)	"	July	31	
(24)	"	August	31	
(25)	"	September	30	
(26)	"	October	31	
(27)	"	November	30	
(28)	"	December	31	
				Total : 365 days
(29)	1996	January	31	
(30)	"	February	29	
				Total : 60 days

S. D. B. (P.M.M.S)
 I.I.I.I. 782(XI)

J. T. O. 110
 ILT-2040 Tech
 Nargun.

CASUAL LABOUR

1. General Terms and Conditions for employment of casual labour

1. The policy regarding engagement of casual workers in Central Government Offices has been reviewed by Government keeping in view the judgement of the Supreme Court delivered on the 17th January, 1986, in the Writ Petition filed by Shri Surinder Singh and others v. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis:—

- (i) Persons on daily wages should not be recruited for work of regular nature.
- (ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts can not be created.
- (iii) The work presently being done by regular staff should be reassessed by the Administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- (iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- (v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the State Government/Union Territory Administration, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.
- (vi) The casual workers may be given one paid weekly off after six days continuous work.
- (vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned in (vi) above.

They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.

- (viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
- (ix) Where work of more than one type is to be performed through out the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.
- (x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age-limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age-limit for the relevant post.
- (xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

2. All the Administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:—

- (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.
- (b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

3. By strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed. Each Head of Office should also nominate an officer who would scrutinise the engagement of each and every casual worker and the job for which he is being engaged to determine whether the work is of casual nature or not.

Ministry of Finance, etc., are requested to bring the contents of the O.M. to the notice of all the appointing authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against the defaulters.]

[G.I. Dept. of Per. & Trg., O.M. No. 49014/2/86-Est. (C), dated the 7th June, 1988 and O.M. No. 53202/16/86-W.C. (M.W.), dated the 23rd August, 1988.]

Clarification.—1. It is hereby clarified that the orders contained in the aforesaid O.M. have come into force on date of issue, viz., 7-6-1988 and casual workers employed in various Secretariat offices are also entitled to payment of wages as provided in this O.M. with effect from 7-6-1988.

2. The Ministry of Finance, etc., are requested that the above clarification may be brought to the notice of all concerned for information and guidance.

[G.I. Dept. of Per. & Trg., O.M. No. 49019/7/87-Est. (C), dated the 30th May, 1989.]

2. Appointment of casual labourers to Group 'D' posts

2.1. The appointment of casual labourers to Group 'D' posts, borne on the regular establishment, which are required to be filled by direct recruitment, will be made subject to the following conditions:—

(i) No casual labourer not registered with the Employment Exchange should be appointed to posts borne on the regular establishment;

(ii) Casual labourers appointed through Employment Exchange and possessing experience of a minimum of two years' continuous service as casual labour in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in that office/establishment without any further reference to the Employment Exchange.

(iii) Casual labourers recruited in an office/establishment direct, without reference to the Employment Exchange, should not be considered for appointment to regular establishment unless they get themselves registered with the Employment Exchange, render from the date of such registration, a minimum of two years' continuous service as casual labour, and are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange. (See paragraph 3 below for one time relaxation.)

2.2. A casual labourer may be given the benefit of 2 years' continuous service as casual labourer if he has put in at least 240 days (22 days in case of offices observing 5 days week) of service as a casual labourer.

(including broken periods of service) during each of the two years of service referred to above.

[G.I., M.F., O.M. No. F. 3 (C)-Est. (C), dated the 24th January, 1961; M.H.A., O.M. No. 6/52/60-Est. (A), dated the 16th February, 1961; No. 16/10/56-Est. (D), dated the 2nd December, 1966; No. 14/1/68-Est. (C), dated the 12th February, 1969 and D.P. & A.R., O.M. No. 49014/19/84-Est. (C), dated the 26th October, 1984.]

3. Regularisation of service of casual workers, not recruited through Employment Exchange before 7-5-1985, in Group 'D' posts

3.1. The services of casual workers may be regularised in Group 'D' posts in various Ministries/Departments, etc., subject to certain conditions, in terms of the general instructions issued by this Department. One of these conditions is that the casual workers concerned should have been recruited through the employment exchange. Sponsorship by the employment exchange being a basic and essential condition for recruitment under the Government, it has repeatedly been brought to the notice of the various administrative authorities that recruitment of casual workers should always be made through the employment exchange. It has, however, come to the notice of this Department that in certain cases these instructions were contravened and casual workers were recruited otherwise than through the employment exchange. Though these persons may have been continuing as casual workers for a number of years, they are not eligible for regular appointment and their services may be terminated any time. Having regard to the fact that casual workers belong to the weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the Director-General, Employment and Training, that casual workers recruited before the issue of these instructions may be considered for regular appointment to Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through the employment exchange, provided they are eligible for regular appointment in all other respects.

3.2. [It is once again reiterated that no appointment of casual workers should be made in future otherwise than through the employment exchanges.] If any deviation in this regard is committed, responsibility should be fixed and appropriate departmental action taken against the official concerned.]

[G.I., D.P. & T., O.M. No. 49014/18/84-Est. (C), dated the 7th May, 1985.]

4. Regularisation of Casual Labourers of Department of Telecom and conferment of temporary status.—1. A scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one year has been approved by the Telecom Commission. Details of the Scheme are furnished in the Annexure.

2. Immediate action may be taken to confer temporary status of the casual labourers in accordance with the above Scheme.

3.1. Instructions were issued to stop fresh recruitment and employment of casual labourers for any type of work in Telecom Circles/Districts. Casual labourers could be engaged after 30-3-1985, in Projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. According to the instructions subsequently issued, fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to.

3.2. In view of the above instructions normally no casual labourers engaged after 30-3-1985, would be available for consideration for conferring temporary status. In the unlikely event of there being any cases of casual labourers engaged after 30-3-1985, requiring consideration for conferment of temporary status, such cases should be referred to the Telecom Commission with relevant details and particulars regarding the action taken against the officer under whose authorisation/approval the irregular engagement/non-retrenchment was resorted to.

3.3. No casual labourer who has been recruited after 30-3-1985, should be granted temporary status without specific approval from this office.

4. The Scheme furnished in the Annexure has the concurrence of Member (Finance) of the Telecom Commission, vide No. SMF/78/89, dated 27-9-1989.

— [G.I. Dept. of Telecom Circular No. 269/10/89/STN, dated the 2nd November, 1989.]

ANNEXURE

Casual Labourers (Grant of Temporary Status and Regularisation) Scheme

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989".

2. This Scheme will come into force with effect from 1-10-1989 onwards.

3. This Scheme is applicable to the casual labourers employed by the Department of Telecommunications.

PROVISIONS

4. The provisions in the Scheme would be as under—

(A) Vacancies in the Group 'D' Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant recruitment rules.

9

However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies.

In the case of illiterate Casual Labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties.

They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purposes of the age-limits prescribed for appointment to the Group 'D' cadre, if required.

✓ Outside recruitment for filling up the vacancies in Group 'D' will be permitted only under the condition when eligible casual labourers are NOT available.

(B) Till regular Group 'D' vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred a Temporary Status, as per the details given below.

5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor.

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

No change of duties

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/territorial circles on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

ENTITLEMENT

6. Temporary status would entitle the casual labourers to the following benefits:—

(i) Wages at daily rates with reference to the minimum of the pay scale for a regular Group 'D' officer, including DA, HRA and GCA.

(ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5-day week) in the year.

(iii) Leave entitlement will be on *pro rata* basis, one day for every 10 days of work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefit of encashment of leave on termination of services for any reason or their quitting service.

(iv) Counting of 50% of service rendered under Temporary status for the purpose of retirement benefits after their regularisation.

(v) After rendering three years continuous service on attainment of Temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to General Provident Fund and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of this Department.

(vi) Until they are regularised, they would be entitled to Productivity-Linked Bonus only at rates as applicable to casual labour.

7. No benefits other than those specified above will be admissible to casual labourers with Temporary status.

TERMINATION OF SERVICE

8. Despite conferment of temporary status the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.

9. If a labourer with temporary status commits a misconduct and the same is proved in the enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the Scheme and/or to issue instructions in detail within the framework of the Scheme.

11. Ban on engagement of casual workers for duties of Group 'C' posts. — There is a complete ban on engagement of casual workers for performing duties of Group 'C' posts and hence no appointment of casual workers should be made in future for performing duties of Group 'C' posts. If any deviation in this regard is committed, the administrative

officer in charge in the rank of Joint Secretary or equivalent will be held responsible for the same.

G.I., M.F., O.M. No. 49014/15/89-Ext. (C, dated the 26th February, 1989.)

5. No wages/paid weekly off to Casual Labourers not employed on any day, even on the days of bandh, curfew, etc.—Certain Circles/Units have sought for clarification on the following points related to the above subject:—

(i) There are occasions when Casual Labourers do not attend to the work, on account of extraneous conditions like bandh, curfew, etc. The point of doubt is whether wages would be admissible to the Casual Labourers on such occasions.

(ii) If wages are not admissible to the Casual Labour for the day/days of non-employment discussed in (i) above, whether it would be admissible to shift the weekly off (normally granted to the Casual Labour), to such day/days of non-employment?

2. In this connection, reference is invited to Department of Personnel and Training, O.M. No. 49014/2/86-Ext. (C), dated 7-6-1988 (vide Sl. No. 310 of *Swamy's Annual*, 1988) which, *inter alia*, stipulates as under—

"The Casual worker may be given one paid weekly off after six days continuous work; payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off. They will, however, in addition be paid for a National Holiday, if it falls on a working day for the casual workers."

These instructions are clear that if a casual worker (including the casual worker granted temporary status), is not employed on any day, whether such non-employment is on account of curfew, bandh, etc., no wages can be paid for that day or days.

3. As regards conversion of the day of bandh, curfew, etc., as "paid weekly off", it may be stated that the facility of paid weekly off is admissible only after a casual employee (including the one granted temporary status) has put in six days of continuous work. The continuity is broken when a casual employee does not attend to his duties on account of any reason whatsoever it may be. The shifting of the weekly off would not be within the guidelines on the subject.

(G.I. Dept. of T., No. 22-10/89-STN, dated the 20th August, 1989.)

7. Payment of wages to unskilled casual workers in Archaeological Survey of India.—It has been decided that the unskilled casual workers whose nature of work is the same as that of the regular employees shall be paid at the rate of Rs. 30/- or Rs. 75/- per Day for work of 8 hours a day with effect from 1-1-1990. The guidelines issued by the Department



S/A & declared
before me by the
deponent who is
identified by :-

H.S. *[Signature]*
21/12/02

Advocate,
Nagaon.

: A F F I D A V I T :



I, Sri Jogendra Nath Saikia, S/o. Late Kameswar Saikia a resident of Vill. Amolapatty, P.O. & P.S. Nagaon in the Dist. of Nagaon, (Assam) do hereby solemnly affirm and declare as follows :-

- 1) That I am a permanent resident of above mentioned address and an employee of Bharat Sanchar Nigam Limited/Ng. This is true.
- 2) That I am employed as an Sub-Divisional Engineer (Internal/Construction) under Telecom District Manager, Bharat Sanchar Nigam Limited, Nagaon, (Assam). This is true.
- 3) That I have countersigned the certificates issued by J.T.O. 1/D. 1 L T- 2048, Exchange, Nagaon in respect of Sri Prabir Kr. Benarjee, Sri Sibu Sankar Kundu and Sri Shambhu Chakraborty. This is true.
- 4) That Sri Prabir Kr. Benarjee, Sri Sibu Sankar Kundu and Sri Shambhu Chakraborty were working as package Type A/C operators in the Nagaon Exchange. This is true.
- 5) That the certificates countersigned by me witnessed the number of days worked in each year by the said person (employed as package Type A/C operators). This is true.

Identified
by me

HB
21/12/02
Advocate, (N)



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6) That I swear this affidavit with a view to declaring the above facts for official purposes. This is true to the best of my knowledge, belief and information.

: V E R I F I C A T I O N :

I, Sri Joyendra Nath Saikia, the deponent named above, do hereby solemnly affirm and declare that the above mentioned statements made in this affidavit are all true and correct to the best of my knowledge, belief and information and as such I put my signature under this verification on this 21st day of December, 2002 at Nagaon Court Premises.

*Affidavit
M. Chakraborty*

Jyotiendra Nath Saikia
: D E P O N E N T :

Guwahati Bench

821
Fixed Office application
through no call to
G. N. Clarkovansky
Ors.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

In the matter of :

O.A. No. 105 of 2002

Shri Prabir Kr. Banerjee & Ors.

~VS~

Union of India & Ors.

and

In the matter of

Rejoinder submitted by the applicant in reply to the written statement submitted by the Respondents.

The applicant above named most humbly and respectfully
begs to state as under :

1. That your applicant categorically denies the statements made in paragraphs 4 (i), (ii), (iii), (iv) and (v) and other contentions made in the said paragraphs of the written statement and further begs to state that a mere reading of the speaking order passed by the respondent i.e. Telecom District Manager, Noagaon Telecom district as well as the contention now raised in paragraph 4 referred to above by the respondent Union of India which is now swearing by Sri S.C. Das, Asstt. Director, Telecom, (Legal), CGM, Assam Circle, Guwahati, the ground of non conferment of temporary

status appears to be contradictory to each other and seems to be misleading. The Telecom District Manager, Telecom Noagaon Telecom District in pursuant to the Hon'ble Tribunal's decision rendered in O.A. 140/2000 had passed a speaking order rejecting the claim of the applicants for conferment of grant of temporary status especially on the alleged ground that the applicants did not fulfill the eligibility criteria firstly, as they were not in service as on 1.8.1998 and the alleged second ground is that they ought to have been completed 240 days in a year during the engagement period but it is not comments made in the speaking order as to whether applicants have completed 240 days of work in a year during the engagement period. It was also alleged in the speaking order that the engagement of the applicants came to an end by way of termination on 20.7.1998 due to a fresh contract that the department entered into with M/s Sudarsana Cooling Farm, Nagaon w.e.f. 1.8.1998 and thus applicants have failed to fulfill the first criteria. The aforesaid grounds put forwarded by the Telecom District Manager, Nagaon for non conferment of grant of temporary status is a deliberate false statement made before this Hon'ble Tribunal which is evident from their own records produced before the Hon'ble Tribunal at Annexure-7. A mere reading of Annexure 7 dated 22.9.1998 issued by the office of the Telecom District Manager, Nagaon, at page 62 of the Original Application will make it abundantly clear that contract entered

into with M/s Sudarsana Cooling Centre and Electricals, Nagaon for a period of one year with effect from 1.9.1998. In the said document dated 22.9.1998 against the column subject it is stated that the contract has been termed as round the clock operational contract for all days in a week at AC Plant at Telephone Exchange, Nagaon, thereby it is amply clear that the contract entered into on 1.9.1998 but not w.e.f. 1.8.1998 as alleged in the speaking order. The period of duty hours of the four applicants could be guessed from the contract itself where the contract is termed as round the clock operational contract for all days in a week at AC Plant at Telephone Exchange, Nagaon for the applicants. Be it stated that since 16.7.1993 only four casual workers, i.e. present three applicants and one Sri R. Rajkhowa has been entrusted with the duty on shifting basis round the clock till 30.8.1998. Even after the contract entered into with the M/S Sudarsana Cooling Farm on 1.9.1998 these three applicants along with Sri R. Rajkhowa discharging round the clock duties for maintaining the AC Plant, Nagaon Telephone Exchange. It would further be evident from Annexure 2 series to the O.A. more particularly at page 33 letter dated 5.6.1998 wherein justification regarding requirement of man power for maintaining the AC operation has been specifically shown by the SDE (Const.) Nagaon in his letter addressed to the D.E. (P & A), Nagaon, wherein it is also made clear by the SDE (Const.) Nagaon, with the following words " No

Operational contract has been offered to any private parties till date" so far maintenance of AC Plant of Nagaon Telephone Exchange. Therefore alleged grounds made by an officer holding the status District Telecom Officer for rejecting the prayer for conferment of Temporary status of casual workers like applicants that too in pursuant to an order passed by this Hon'ble Tribunal is highly shocking and the officer concerned is liable for perjury as well as liable for contempt of court for submitting such deliberate false statement before the Hon'ble Tribunal. The other ground raised in the speaking order that the services of the applicants were terminated on 20.7.1998 is blatant lie. In this connection it may be stated that a mere perusal of the documents annexed to Annexure 2 series to the O.A. more particularly at page no. 36 a document pertaining to the payment of wages for the month August, 1998 and the categorical statement of the applicants made in paragraph 4.9 of the O.A. to the effect that the payment of wages had been received by the applicants for the month of July and August 1998 has not been denied in the written statement filed by the respondent Union of India. It is pertinent to mention here that the payment of wages of the applicant were made all along from the same head of account, where from wages of other daily rated mazdoors were paid which would be evident from the payment of schedule of monthly wages as such applicant are entitled to conferment of Temporary Status with retrospective effect.

SC

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2. That your applicant categorically denied the statement made in paragraphs 5,6 and 7 of the written statement and further beg to state that in view of their long casual service rendered in the department of Telecom, they are entitled to the benefit of conferment of Temporary Status with retrospective effect.

In the facts and circumstances stated above the application deserves to be allowed with costs.

VERIFICATION

Prabir Kr Banerjee

(89)

a/

VERIFICATION

I, Shri Prabir Kumar Banerjee, S/o Shri Anil Kumar Banerjee, working as A/C Operator (casual labour basis), New Telephone Exchange, Assam, Nagaon, do hereby verify that the statements made in paragraphs 1 and 2 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 26th day of April, 2002.

Prabir K. Banerjee